

No. 15178

---

United States  
Court of Appeals  
for the Ninth Circuit

---

ONG WAY JONG, alias Johnny Ong and WEE  
ZEE YEP, Appellants,

vs.

UNITED STATES OF AMERICA,  
Appellee.


---

Transcript of Record

---

Appeal from the United States District Court for the Northern  
District of California, Southern Division

---



Digitized by the Internet Archive  
in 2011 with funding from  
Public.Resource.Org and Law.Gov

## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

### Appeal:

Certificate of Clerk to Transcript of Record on .....	21
Notice of (Jong).....	18
Notice of (Yep).....	19, 20
Statement of Points on (USCA).....	237

Certificate of Clerk to Transcript of Record on Appeal .....	21
---	----

Indictment .....	3
------------------	---

### Judgment and Commitment of:

Ong Way Jong.....	11
Wee Zee Yep.....	13

### Minute Orders:

March 8, 1956—Arraignment, Ong Way Jong	7
March 12, 1956—Entry of Plea by Wee Zee Yep .....	8
May 10, 1956—Hearing on Motion for New Trial—Denied .....	9

ii.

Motion for New Trial (Jong).....	17
Names and Addresses of Attorneys.....	1
Notice of Appeal:	
Ong Way Jong.....	18
Wee Zee Yep (Letter).....	19
Wee Zee Yep.....	20
Notice of Motion for New Trial (Jong).....	16
Substitution of Attorneys (Jong).....	18
Statement of Points Relied Upon by Appellant Ong Way Jong (USCA).....	237
Transcript of Proceedings and Testimony....	23
Motion for Judgment of Acquittal as to Ong Way Jong .....	165
Motion for New Trial (Jong).....	218
Motion to Exclude Evidence (Mr. Ringole)..	156
Motion to Strike and Exclude Evidence (Mr. Riordan) .....	154
Opening Statement on Behalf of Government	24
Witnesses:	
Albee, Daniel P.	
—direct (Constine) .....	126
—cross (Riordan) .....	129
—redirect (Constine) .....	136



Transcript of Proceedings—(Continued)

Witnesses (Continued):

Chan, William

—direct (Riordan) ..... 204

Gowans, William J.

—direct (Constine) ..... 30

Hipkins, Bruce E.

—direct (Constine) ..... 79

—cross (Ringole) ..... 93

—cross (Riordan) ..... 93

Jong, Ong Way

—direct (Riordan) ..... 176

—cross (Constine) ..... 188

—redirect (Riordan) ..... 199, 202

Ong, Edward

—direct (Riordan) ..... 209

—cross (Constine) ..... 211

Ong, Helen

—direct (Riordan) ..... 206

—cross (Constine) ..... 207

—redirect (Riordan) ..... 207

—recross (Constine) ..... 208

# Transcript of Proceedings—(Continued)

## Witness—(Continued):

Prziborowski, Eldon R.

—direct (Constine) ..... 100

—cross (Riordan) ..... 106

Stenhouse, John A.

—direct (Constine) ..... 108

—cross (Riordan) ..... 124

Wolski, Chester J.

—direct (Constine) ..... 138

—cross (Riordan) ..... 148

Wu, Milton K.

—direct (Constine) ..... 37

—cross (Riordan) ..... 61

—redirect (Constine) ..... 76

## Waiver of Jury Trial:

Ong Way Jong (Johnny Ong)..... 7

Wee Zee Yep..... 6

## NAMES AND ADDRESSES OF ATTORNEYS

LLOYD H. BURKE,

United States Attorney,

DONALD B. CONSTINE and

RICHARD H. FOSTER,

Assistant United States Attorneys,

U. S. Post Office Building,

San Francisco, California,

Attorneys for Plaintiff and Appellee.

HERRON AND WINN,

345 Grove Street,

San Francisco, California,

Attorneys for Defendant and Appellant,

Ong Way Jong.

GEORGE T. DAVIS,

98 Post Street,

San Francisco, California,

Attorney for Appellant, Wee Zee Yep.



In The United States District Court for the Northern District of California, Southern Division

Criminal No. 34979

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WEE ZEE YEP and ONG WAY JONG,

alias Johnny Ong,

Defendants.

### INDICTMENT

(Violation: Secs. 4704 and 7237, Title 26 USC (1954 Ed.), Harrison Narcotic Act; Sec. 174, Title 21 USC, Jones-Miller Act; Sec. 371, Title 18 USC—Unlawful Sale and Possession of Heroin and Conspiracy.)

First Count: (Secs. 4704 and 7237 of Title 26 U.S.C. (1954 Ed.), Harrison Narcotic Act.)

The Grand Jury charges:

That on or about the 1st day of February, 1956, in the City and County of San Francisco, State and Northern District of California, defendant Wee Zee Yep unlawfully did sell, dispense and distribute, not in or from the original stamped package, a certain quantity of a narcotic drug, to-wit, approximately 1 ounce and 36 grains of heroin.

Second Count: (21 U.S.C., 174, Jones-Miller Act.)

The Grand Jury further charges:

That at the time and place mentioned in the first count of this indictment, within said Division and District, defendant Wee Zee Yep fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a narcotic drug, to-wit, approximately 1 ounce and 36 grains of heroin, and the said heroin had been imported into the United States of America contrary to law as defendant Wee Zee Yep then and there well knew.

Third Count: (18 U.S.C., Section 371)

The Grand Jury further charges:

1. That at a time and place to the Grand Jury unknown, defendants Wee Zee Yep and Ong Way Jong, alias Johnny Ong, and others to the Grand Jury unknown, did knowingly and wilfully conspire together.

2. That the objects of said conspiracy were to sell, dispense and distribute, not in or from the original stamped packages, quantities of narcotic drugs, to-wit, heroin, in violation of Sections 4704 and 7237 of Title 26 United States Code (1954 Ed.), and to conceal and facilitate the concealment and transportation of quantities of narcotic drugs, to-wit, heroin, which had been imported into the United States of America contrary to law in violation of Section 174 of Title 21 United States Code.

3. That in pursuance of said conspiracy and to effect the objects thereof, in the Northern District

of California, Southern Division, defendants Wee Zee Yep and Ong Way Jong, alias Johnny Ong, did the following overt acts:

Overt Acts

1. On or about February 1, 1956 at San Francisco, California, defendant Wee Zee Yep sold a quantity of heroin for the sum of \$600.

2. On or about February 1, 1956 defendant Wee Zee Yep entered a residence at 83 Winfield Street, San Francisco, California.

3. On or about February 1, 1956, in the City and County of San Francisco, defendants Wee Zee Yep and Ong Way Jong, alias Johnny Ong, traveled together in a 1951 Cadillac Coupe bearing California license number CKC 040.

4. On or about February 1, 1956 defendant Wee Zee Yep met defendant Ong Way Jong, alias Johnny Ong, at 1003 Jackson Street, San Francisco, California.

A True Bill.

/s/ FRED M. MARTIN,  
Foreman

/s/ LLOYD H. BURKE,  
United States Attorney

Approved as to Form: rhs.

(Violation: 4704 and 7237, 26 USC (1954 Ed), Harrison Narcotic Act; 21 USC 174, Jones-Miller Act; 18 USC 371—Unlawful sale and possession of heroin and conspiracy. Penalty: Counts 1 and 2—



Fine of not more than \$2,000 and imprisonment for not less than 2 nor more than 5 years. Count 3—\$10,000 and/or 5 years.)

[Endorsed]: Filed March 7, 1956.

---

[Title of District Court and Cause.]

### WAIVER OF JURY TRIAL

In conformity with Rule 23 of the Rules of Criminal Procedure for the District Courts of the United States, effective March 21, 1946, we, the undersigned, do hereby waive trial by jury and request that the above entitled cause be tried before the Court sitting without a jury.

Dated: San Francisco, California, . . . . ., 19..

/s/ WEE ZEE YEP,  
Defendant

/s/ GUS C. RINGOLE,  
Attorney for Defendant

/s/ DONALD B. CONSTINE,  
Assistant U. S. Attorney

Approved:

/s/ O. D. HAMLIN,  
Judge, United States District  
Court, Northern District of  
California.

[Endorsed]: Filed April 20, 1956.

[Title of District Court and Cause.]

WAIVER OF JURY TRIAL

In conformity with Rule 23 of the Rules of Criminal Procedure for the District Courts of the United States, effective March 21, 1946, we, the undersigned, do hereby waive trial by jury and request that the above entitled cause be tried before the Court sitting without a jury.

Dated: San Francisco, California, . . . . ., 19...

/s/ JOHNNY ONG,

Defendant

/s/ JOHN M. RIORDAN,

Attorney for Defendant

/s/ DONALD B. CONSTINE,

Assistant U. S. Attorney

Approved:

/s/ O. D. HAMLIN,

Judge, United States District  
Court, Northern District of  
California.

[Endorsed]: Filed April 20, 1956.

---

United States District Court for the Northern  
District of California, Southern Division

At a stated term of the United States District Court for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Thurs-

day, the 8th day of March, in the year of our Lord one thousand nine hundred and fifty-six.

Present: The Honorable Michael J. Roche, District Judge.

United States of America v. Ong Way Jong.

This case came on regularly this day for arraignment. The defendant was present in custody of United States Marshal and with his attorney, John Riordan, Jr., Esq. *John H. Riordan, Jr., Esq.*, Assistant U. S. Attorney, was present on behalf of the United States.

Defendant was arraigned upon the indictment filed herein against him, stated his true name as charged. Counsel waived reading indictment, substance of charge was stated to defendant, and copy of indictment handed to him. Defendant stated he understood the charge against him.

Defendant was called to plead and thereupon said defendant entered a plea of Not Guilty to the indictment, which plea was ordered entered.

Counsel made motion for reduction of bail to \$5,000.00, which motion was ordered granted.

Ordered case continued to March 15, 1956, to be set for trial. Ordered that defendant be remanded to custody in default of bail.

---

United States District Court for the Northern  
District of California, Southern Division

At a stated term of the United States District  
Court for the Northern District of California,

Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 12th day of March, in the year of our Lord one thousand nine hundred and fifty-six.

Present: The Honorable Michael J. Roche, District Judge.

United States of America v. Wee Zee Yep.

This case came on regularly this day for entry of plea. The defendant Wee Zee Yep was present in custody of United States Marshal and with his attorney, Gus Ringole, Esq. John H. Riordan, Jr., Esq., Assistant United States Attorney, was present on behalf of the United States.

The defendant was called to plead and thereupon said defendant entered a plea of Guilty to Count 2 of indictment; and Not Guilty as to Counts 1 and 3 of indictment, which plea the Court ordered entered.

After hearing counsel, ordered case continued to March 19, 1956, for judgment as to Count 2; and to be set for trial as to Counts 1 and 3.

---

United States District Court for the Northern  
District of California, Southern Division

At a stated term of the United States District Court for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Thurs-

day, the 10th day of May, in the year of our Lord one thousand nine hundred and fifty-six.

Present: The Honorable Michael J. Roche, District Judge.

United States of America v. Ong Way Jong.

This case came on regularly this day for hearing motion for new trial and for pronouncing of judgment. Defendant was present in custody of United States Marshal and with his attorney John Riordan, Esq. Donald B. Constine, Esq., Assistant United States Attorney, was present on behalf of the United States. T. Hanson, Probation Officer, was present.

After hearing counsel, ordered that motion for new trial be, and the same is hereby, denied.

Defendant was called for judgment. The Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) Years and pay a fine in the sum of One Dollar (\$1.00) to the United States of America on Count 3 of indictment.

The Court recommends commitment to an insti-



tution to be designated by the United States Attorney General.

Ordered that judgment be entered herein accordingly.

---

United States District Court for the Northern  
District of California, Southern Division

No. 34979

UNITED STATES OF AMERICA

v.

ONG WAY JONG, alias Jonny Ong.

### JUDGMENT AND COMMITMENT

On this 10th day of May, 1956 came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of violation of Title 18 USC, Sec. 371—Conspiracy.

(At a time and place unknown, defendants Ong Way Jong, alias Jonny Ong, and others to the Grand Jury unknown, did knowingly and wilfully conspire together. The objects of said conspiracy were to sell, dispense and distribute, not in or from the original stamped packages, quantities of narcotic drugs, to-wit, heroin, in viol. §§4704 and 7237, 26 USC, 1954 Ed.; and to conceal and facilitate the

concealment and transportation of heroin which had been imported into the United States of America contrary to law in viol. of §174, 21 U.S.C. In pursuance of said conspiracy and to effect the objects thereof, in the Nor. Dist. of Calif., Southern Division, defendant Ong Way Jong, alias Jonny Ong, on or about Feb. 1, 1956 at San Francisco did certain overt acts), as charged in Count 3 of indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years and pay a fine in the sum of One Dollar (\$1.00) to the United States of America on Count 3 of indictment.

(Indictment—3 counts. Defendant not named in Counts 1 and 2.)

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ MICHAEL J. ROCHE,  
United States District Judge

Examined by:

/s/ DONALD B. CONSTINE,  
Assistant U. S. Attorney



The Court recommends commitment to an institution to be designated by U. S. Attorney General.

C. W. CALBREATH,  
Clerk

/s/ By J. P. WELSH,  
Deputy Clerk

Entered in Criminal Docket 5-15 1956, June 11, 1956.

[Endorsed]: Judgment and Commitment filed this 14th day of May, 1956.

---

United States District Court for the Northern  
District of California, Southern Division

No. 34979

UNITED STATES OF AMERICA

v.

WEE ZEE YEP

### JUDGMENT AND COMMITMENT

On this 17th day of May, 1956 came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a finding of guilty as to Counts 1 and 3; defendant pleaded guilty to Count 2. Offenses charged being:

Count 1 — §§4704 and 7237, 26 USC 1954 Ed.

Harrison Narcotic Act—(Feb. 1, 1956, San Francisco, unlawful sale of approximately 1 ounce and 36 grains of heroin);

Count 2—21 USC 174, Jones-Miller Act—(at said time and place defendant unlawfully possessed aforesaid heroin);

Count 3—18 USC 371—Conspiracy. (At a time and place unknown defendants Wee Zee Yep, et al., and others unknown, did knowingly and wilfully conspire together. Objects of said conspiracy was to unlawfully sell heroin (§§4704 and 7237, 26 USC 1954 Ed.); and to conceal and facilitate the concealment and transportation of quantities of narcotic drugs, heroin, which had been imported into USA contrary to law (§174, 21 USC). In pursuance of said conspiracy and to effect objects thereof on three occasions on or about Feb. 1, 1956 at San Francisco said defendant Wee Zee Yep did certain overt acts),

as charged in Counts 1, 2, 3 of indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of: Count 1—two (2) years and fined one dollar (\$1.00), Count 2—two (2) years and fined

one dollar (\$1.00), Count 3—five (5) years and fined one dollar (\$1.00).

Ordered that said terms of imprisonment run concurrently.

Further Ordered that said terms of imprisonment this day imposed by this Court on Counts 1, 2, 3 of indictment No. 34979 run from and after the expiration of term of imprisonment imposed in case No. 34978, U. S. vs. Wee Zee Yep.

Totals: No. 34979—5 years and fined \$3.00, No. 34978—5 years and fined \$2.00 = 10 years and \$5.00.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ MICHAEL J. ROCHE,  
United States District Judge

Examined by:

/s/ DONALD B. CONSTINE,  
Assistant U. S. Attorney

The Court recommends commitment to an institution to be designated by U. S. Attorney General.

C. W. CALBREATH,  
Clerk

Recapitulation:

34978.....	5 years and	\$2.00
34979.....	5 years and	\$3.00
34980.....	5 years and	\$5.00

---

15 years and \$10.00

(See U. S. v. Wee Zee Yep, Nos. 34978, 34979, 34980.)

Entered in Criminal Docket 5-24 1956, June 11, 1956.

[Endorsed]: Judgment and commitment filed this 23rd day of May, 1956.

---

[Title of District Court and Cause.]

### NOTICE OF MOTION FOR NEW TRIAL

To Lloyd H. Burke, United States Attorney and Donald Constine, Assistant United States Attorney:

You and Each of You Will Please Take Notice that upon the attached motion for a new trial, filed the 4th day of May, 1956 with the Clerk of the United States District Court for the Northern District of California, Southern Division in San Francisco, California, the above named defendant Ong Way Jong alias Johnny Ong, will move for a new trial upon the indictment found against the defendant and upon all the proceedings heretofore had herein, said motion will be made in the United States District Courthouse located in the Postoffice Building at 7th and Mission Streets in the City and County of San Francisco, in Room No. 338 before the Honorable Michael J. Roche on the 10th day of May, 1956 at the opening of Court on that day, or as soon thereafter as counsel can be heard for an Order granting a new trial and for such other and

further relief as to the Court may seem just and proper.

/s/ JOHN M. RIORDAN,

Attorney for Defendant Ong

Way Jong, alias Johnny Ong

Acknowledgment of Service Attached.

[Endorsed]: Filed May 4, 1956.

---

[Title of District Court and Cause.]

### MOTION FOR A NEW TRIAL

The defendant Ong Way Jong alias Johnny Ong moves the Court to grant him a new trial for the following reasons:

1. The Court erred in denying defendant's motion for acquittal at the conclusion of the evidence.
2. The verdict is contrary to the weight of the evidence.
3. The verdict is not supported by substantial evidence.
4. The Court erred in admitting testimony of all government witnesses to which objections were made.

/s/ JOHN M. RIORDAN,

Attorney for Defendant Ong

Way Jong alias Johnny Ong

[Endorsed]: Filed May 4, 1956.



[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that Ong Way Jong, alias Johnny Ong, one of the defendants in the cause numbered and entitled as above, appeals to the United States Court of Appeals for the Ninth Circuit from the judgment heretofore, to wit, given, made and entered by the United States District Court on the 10th day of May, 1956, wherein the said defendant was sentenced to five years in a Federal Penitentiary in addition to a fine in the sum of \$100.00.

Dated: This 17th day of May, 1956.

HERRON & WINN,

/s/ By FRED R. WINN,

Attorneys for Defendant, Ong  
Way Jong alias Johnny Ong

[Endorsed]: Filed May 17, 1956.

---

[Title of District Court and Cause.]

### SUBSTITUTION OF ATTORNEYS

Notice is hereby given that Ong Way Jong, alias Johnny Ong, one of the defendants in the action depending in the said District Court and numbered and entitled as above, hereby by and through Jennie Ong, his wife and next friend, and thereunto duly authorized, has substituted and does hereby substi-

tute Herron & Winn as his attorneys in said cause in the place instead of John M. Riordan, Esq.

Dated: This 16th day of May, 1956.

ONG WAY JONG,  
Alias Johnny Ong  
/s/ By JENNIE ONG

I hereby consent to the said substitution.

/s/ JOHN M. RIORDAN

We hereby accept the said substitution.

HERRON & WINN,  
/s/ By FRED R. WINN

[Endorsed]: Filed May 17, 1956.

---

[Title of District Court and Cause.]

To: The Clerk, United States District Court,  
Northern District of California.

Please take notice that the undersigned defendant in the cause: United States of America vs. Wee Zee Yep, and in which cause defendant was sentenced to a term of imprisonment by Hon. Michael J. Roche, Chief United States District Judge on the 17th day of May, 1956, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the conviction, judgment, sentence and denial of a motion for a new trial.

Said defendant: hereby files said notice of appeal



in propria persona pending his securing new and different counsel to represent him in said appeal.

Dated: May 19, 1956.

/s/ WEE ZEE YEP,

Defendant, pro per

#1 Dunbar Lane,

San Francisco, California

Defendant-appellant hereby elects not to commence service of the sentence imposed upon him pending his securing new council and until further notice to the contrary.

Dated: May 19, 1956.

WEE ZEE YEP

[Endorsed]: Filed May 24, 1956.

---

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Name of appellant: Wee Zee Yep.

Name and address of appellant's attorney: George T. Davis, 98 Post Street, San Francisco 4, California.

Offense: Unlawful sale and possession of Heroin and conspiracy.

Judgment: Judgment of guilty entered May 23, 1956, sentencing appellant to 2 years and a fine of \$1.00 on Count 1, 2 years and a fine of \$1.00 on Count 2, and 5 years and a fine of \$1.00 on Count 3,

to run concurrently after the expiration of the sentence imposed on appellant in Case No. 34978.

Institution where confined: San Francisco County Jail.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated: June 26, 1956.

/s/ GEORGE T. DAVIS,  
Attorney for Appellant

Affidavit of Service by Mail Attached.

[Endorsed]: Filed June 27, 1956.

---

[Title of District Court and Cause.]

## CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys for the appellants:

Indictment

Waiver of Jury Trial for Yep and Jong

Minutes for March 8th, March 12th and May 10th

Judgment and Commitment for Jong

Judgment and Commitment for Yep

Notice of Motion for New Trial for Jong  
Motion for a New Trial for Jong  
Reporter's Transcript for Jong  
Notice of Appeal for Jong  
Notice of Appeal for Yep (letter)  
Notice of Appeal for Yep  
Designation of Contents of Record on Appeal for  
Jong  
Amended Designation of Contents of Record on  
Appeal for Jong  
Designation of Contents of Record on Appeal

In Witness Whereof, I have hereunto set my  
hand and affixed the seal of said District Court, this  
28th day of June, 1956.

[Seal]

C. W. CALBREATH,  
Clerk

/s/ WM. J. FLINN,  
Deputy Clerk

In the United States District Court for the Northern District of California, Southern Division

No. 34979

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WEE ZEE YEP and ONG WAY JONG, alias  
JOHNNY ONG, Defendants.

Before: Hon. Michael J. Roche, Judge.

REPORTER'S TRANSCRIPT

April 25 and 26, 1956

Appearances: For the Government: Hon. Lloyd H. Burke, United States Attorney, by Donald B. Constine, Esq., Asst. U. S. Attorney. For the Defendants: Wee Zee Yep: Gus C. Ringole, Esq. Johnny Ong: John M. Riordan, Esq. [1\*]

The Clerk: United States versus Yep and Ong, for trial.

Mr. Constine: Ready for the United States.

Mr. Riordan: Ready for Ong.

Mr. Ringole: Ready.

Mr. Constine: May it please Your Honor, this is a court trial in connection with the defendant Yep who has been before Your Honor in two other cases, and the defendant Johnny Ong, represented by

---

\* Page numbers appearing at top of page of original Reporter's Transcript of Record.

counsel, who has not been before Your Honor before. Both defendants have waived trial by jury.

This is a case that was mentioned yesterday that was assigned to Your Honor, pursuant to Your Honor's wishes, for court trial.

The Court: You conveyed the message, did you?

Mr. Constine: Yes, I did, yes, Your Honor, yesterday morning.

Mr. Ringole: Pardon me, Your Honor, I conveyed it.

Mr. Constine: Excuse me, Your Honor. I talked to Mr. Robb yesterday morning as soon as I left the courtroom.

The Court: All right.

Mr. Constine: May it please Your Honor, inasmuch as this is a conspiracy case plus the substantive offenses, I wish to make a brief opening statement of what the Government intends to prove.

This indictment was returned by the Grand Jury in three [4] counts. It charges the defendant Yep with the transfer of a quantity of heroin on February 1st of this year; the second count charges him with the possession of that heroin, while the third count charges the defendant Yep and the defendant Ong with conspiracy to violate the narcotic statutes.

The defendant Yep has plead guilty to the possession of the heroin. However, he has plead not guilty to the transfer of that heroin, and he and Ong have plead not guilty to the conspiracy count.

I might say that this will be a relatively simple case. Much of the proof in this particular indict-



ment will center around the transaction of February 1st.

The primary witness, Your Honor, for the Government will be Mr. Wilton Wu, who sits at my left, a United States Treasury agent who in this case operated in an undercover capacity pretending to be a narcotic purchaser from Denver, Colorado.

The evidence that will be introduced will show that the defendant Yep is a narcotic peddler of some substance, having been selling heroin in this community in large quantities for approximately four years.

The proof will show that he had a number of sources for his heroin, one source Caucasian seaman who sailed between Hongkong and the United States. I might state, just as an aside, that that was the case that was before Your [5] Honor yesterday—the activities of this defendant and the seaman, Mr. Houk, who I might say plead guilty before Your Honor yesterday.

However, the defendant had other sources of narcotics within this community, and it is the Government's contention, of course, that one of these other sources was the defendant Johnny Ong.

In the middle of January Mr. Wu, in the undercover capacity, we will show met the defendant Yep and negotiated for a sale of narcotics, which actually took place.

Yep explained that his seaman friend, the man that was before Your Honor yesterday, was still out at sea and not available, and, therefore, he had to turn to another connection, a good friend of his

that he had in San Francisco. We will show that other connection was the defendant Johnny Ong.

On January 23rd we will show that Mr. Wu purchased from Mr. Yep two ounces of heroin. On February 1st we will show that Mr. Wu purchased another ounce of heroin from Mr. Yep, and it is on this transaction that the agents observed Mr. Yep and Mr. Ong in the conspiracy as both defendants were under constant surveillance for the most part during that day, February 1st.

Now the remaining link—the proof will show that the defendant Yep identified the defendant Johnny Ong as his [6] connection, as one of his sources of narcotics, and he described him as an unemployed ex-bookie, gambler, who owned a 1955 Cadillac and who had no job at the particular time.

I say that because the Government will show that it was this 1955 Cadillac that was offered by the defendant Yep as security in the narcotic transaction with Mr. Wu.

We will also show that after an additional sale when both defendants were apprehended and arrested, the defendant Ong was confronted with the fact that the agents believed him to be involved in this narcotic transaction on February 1st, they accused him of delivering the narcotics to Mr. Yep, and in the light of this accusation the defendant remained silent and made no statement or explanation at all, although he did admit that he had had no job for over a year and was unemployed.

There are a number of agents that the Government will call in this case, Your Honor. It will be



something that can be compared to a jigsaw puzzle. Each agent can only testify to what he saw or what he observed; it will not be until all the agents testify before Your Honor that the complete picture of the defendant Ong's guilt and the defendant Yep's guilt will be made clear.

Mr. Riordan: May it please the Court, at this time in view of the Government's opening statement I would like to move for a dismissal. [7]

The Government in substance related the acts that were performed by Mr. Yep, and the Government's statement in relation to Mr. Ong was merely that they met on various occasions on the first day of February.

Apparently this is a conspiracy. Constant authorities, frequent authorities hold that a mere meeting alone doesn't give rise to even an inference of a conspiracy.

Apparently from that source or that supposedly overt act, they discussed various hearsay statements which were made apparently, or at least by the Government's intention, by Mr. Wee Zee Yep which have only a tendency or an inclination from which inference is alone to be drawn that Mr. Ong was involved.

In view of the opening statement of the Government in which no conspiracy is discussed, no overt act is put before the Court, and mere hearsay is brought in to connect my client, Mr. Ong, with this matter, I hereby move for an acquittal of Mr. Ong at this time.

Mr. Constine: Mr. Ringole, do you wish to make a statement?

Mr. Ringole: I will join with counsel in that motion.

The Court: What is that?

Mr. Constine: He says he will join with Mr. Riordan in that motion.

I will only say that this is somewhat novel; that I [8] didn't consider myself a witness. I am only stating what we intend to prove and that we will prove him guilty of a conspiracy. The evidence has to be introduced before Your Honor can take any action on a motion to dismiss. We are going to prove him guilty of the charges filed against him by the Grand Jury, which is conspiracy. I merely outlined briefly what the evidence will prove. I did not state what the agents will testify to. We will produce the agents and Your Honor will hear them.

The Court: The motions and each of them will be denied.

Mr. Ringole: May I state, Your Honor, in accordance with what has been my policy with the defendant Yep to save any time and trouble, that I have had him plead guilty to a number of the counts in the three indictments against him. I requested the United States Attorney after the plea to dismiss the others, and they refused to do so.

In this particular indictment, this being one of the three, he had heretofore plead guilty before Your Honor of the second count—. Is that right?

Mr. Constine: Possession. That's right.

Mr. Ringole: Yes, the second count. Now then, in

order to save time, in view of the attitude of the Government making this man as I called him the "Book-of-the-Month Club" defendant—they will not dismiss any of these counts—they will change his plea to the second count. [9]

Mr. Constine: He has already plead to that.

Mr. Ringole: To the first count.

Mr. Constine: Does he wish to change his plea to the third count of the indictment?

Mr. Ringole: No, not to the third count. I am speaking of the count to which he will change his plea—to the first count. He will plead guilty to that count.

The Court: I shall at this time take it under advisement.

Mr. Ringole: All right, Your Honor.

The Court: Proceed.

Mr. Constine: Mr. Gowans.

### WILLIAM J. GOWANS

called as a witness on behalf of the Government;  
sworn.

The Court: Your full name, please?

A. William J. Gowans.

The Court: Your business or occupation?

A. I am a chemist employed by the U. S. Treasury Department.

The Court: How long have you been so engaged?

A. I have been employed by the Treasury Department fifteen months.

Q. Prior to that time?

(Testimony of William J. Gowans.)

A. I worked as an analytical chemist for approximately ten years. [10]

The Court: Take the witness.

Mr. Constine: Did I understand from Mr. Ringole that you wish to stipulate to his qualifications as a chemist?

Mr. Ringole: Oh, yes. Why, certainly. It is proposed that he introduce some heroin in evidence. If he tells us that is heroin, that goes with me.

The Court: Very well. What about you?

Mr. Riordan: I don't see much advantage to me in stipulating to anything, Your Honor.

The Court: Do you stipulate as to his qualifications?

Mr. Riordan: I will stipulate to his qualifications in view of the foregoing questions and answers; yes, Your Honor.

The Court: Very well. Let the record so show.

#### Direct Examination

Q. (By Mr. Constine): Mr. Gowans, is heroin a narcotic? A. It is.

Q. And what is its source? In other words, what is it a derivative of?

A. It is a derivative of opium.

Q. Mr. Gowans, have you brought with you two exhibits at the request of the United States Attorney? A. I have.

Q. Would you kindly produce those exhibits for me, please? A. I have them.

Mr. Constine: May this exhibit that is already



(Testimony of William J. Gowans.)

marked [11] Exhibit 1 be marked Exhibit 1 for identification for the Government?

The Court: It will be so marked for identification.

The Clerk: Government's Exhibit 1 marked for identification.

(Whereupon packet referred to above was marked U. S. Exhibit No. 1 for identification.)

Mr. Constine: May the second packet that is already marked 2 be marked Exhibit 2 for identification on behalf of the Government?

The Court: Let it be admitted for the purpose of identification next in order.

The Clerk: Government's Exhibit 2 for identification.

(Whereupon packet referred to above was marked U. S. Exhibit No. 2 for identification.)

Q. (By Mr. Constine): Now, Mr. Gowans, I will hand you Government's Exhibit 1 for identification and Government's Exhibit 2 for identification and ask you whether you have ever seen those packets before. A. I have.

Q. Where have they been or where did you take them from?

A. I received these packages from Agent Wu.

Q. And do you know the approximate dates?

A. I received Exhibit No. 1 on January 24, 1956 and Exhibit No. 2 on February 2nd, 1956. [12]

Q. Mr. Wu is the gentleman who sits at my left, Mr. Milton Wu of the Bureau of Narcotics.

A. Yes, sir.

(Testimony of William J. Gowans.)

Q. Did you conduct any chemical analysis or examination of the contents of Exhibit 1?

A. I did.

Q. Can you kindly tell us what it contains?

A. It contains heroin.

Q. And do you know the approximate amount of heroin?

A. Yes, sir, I do. It contains 70 per cent heroin.

Q. Do you know the weight?

A. Oh, the weight? The weight is one ounce, 431 grains, which is just shy of two ounces.

Q. Just shy of two ounces?

A. Just short of two ounces.

Q. And that is the heroin you received on January 24th, Exhibit 1?      A. That is right.

Q. Will you kindly tell us what Exhibit 2 contains?

A. Exhibit 2 contains one ounce, 36 grains of heroin.

Q. Will you kindly tell us how you conducted your analysis, just very briefly?

A. Well, I first determined that it was an opium alkaloid, and then I proceeded on to identify the opium alkaloid as heroin by microscopic and also color tests. [13]

Q. Was this soluble? Was this ready for so-called use?      A. Yes, it was soluble.

Q. In each case?      A. Yes, sir.

Q. Are those packets sealed?      A. They are.

Q. And were they sealed in your presence?

A. Yes, sir.



(Testimony of William J. Gowans.)

Q. And have those seals been broken?

A. I broke them when I performed the analysis.

Q. You broke them yourself? A. Yes, sir.

Q. And then did you reseal them?

A. Then I resealed them.

Mr. Riordan: May I object before we proceed any further, Your Honor? As to Exhibit 1 now that it has been properly identified, I would like to object to any testimony, even for the purpose of identification at this time, to any heroin that was received by the Government in the amount—I'm sorry, what was the amount of heroin received by you on February——

The Witness: Exhibit No. 1?

Mr. Riordan: Exhibit No. 1.

Mr. Constine: That was January 23rd, Exhibit 1.

The Witness: January 24th I received it.

Mr. Constine: January 24th. [14]

The Witness: 1956.

Mr. Constine: That is Exhibit 1 for identification.

Mr. Riordan: Might I state at this time that I will object on behalf of Mr. Ong to even the identification of this amount because there is no reference at all to this particular amount of heroin involved in this indictment.

Mr. Constine: Your Honor, we intend to prove similar offenses in this case. This is only for identification, and unless we connect this up later, of course Your Honor will disregard it. But this is a conspiracy case and we cannot put in all the

(Testimony of William J. Gowans.)

evidence at one time; we have to bring it forth from the witnesses; and at the close of the Government's case then is the time to determine whether we have connected these transactions up with the defendant.

However, we are offering it at this time against the defendant Yep and the defendant Ong. There has been no testimony just who Mr. Wu purchased the narcotics from; this is for identification purposes only. There is no jury present and I am sure Your Honor will keep your mind open until the evidence is produced before Your Honor.

Mr. Riordan: I would like to make one further observation alone on this motion: that this amount of heroin was received by this gentleman now on the stand on the 24th and the acts and charges against my defendant allegedly occurred on February 1. [15]

Mr. Constine: That is not true, Your Honor. His defendant is charged with conspiracy, and the conspiracy is at a time and place to the Grand Jury unknown. Although there are overt acts listed as of February 1st, as in all conspiracy cases overt acts can be proved prior to the overt acts set forth in the indictment and subsequent to those overt acts.

The Court: The Court is prepared to rule. The objection will be overruled.

Q. (By Mr. Constine): Did you reseal these packages after you examined them? A. I did.

Q. Do your initials appear on these packages?

A. They do.

(Testimony of William J. Gowans.)

Q. And they are the packages you received from Mr. Wu?           A. Yes, sir.

Mr. Riordan: May we have them?

Mr. Constine: Does counsel wish to open these packages at this time?

Mr. Riordan: No.

Mr. Constine: They are just in for identification at this time.

The Court: Let them be admitted and marked for the purpose of identification.

The Clerk: Government's Exhibits 1 and 2 for the [16] purposes of identification.

Mr. Constine: No further questions of this witness.

Mr. Riordan: No questions.

Mr. Constine: Thank you.

Mr. Ringole: Mr. Constine, will you give me a stipulation, please, that any objections made by Mr. Riordan on behalf of his client may be regarded as having been made by me too on behalf of Wee Zee Yep?

Mr. Constine: I have no objection, but I think that would be a matter for Mr. Riordan and Mr. Ringole to determine themselves what arrangements they want to make. Whatever you two gentlemen agree is perfectly all right with me.

Mr. Ringole: There is no use of my parroting Mr. Riordan.

The Court: There is nothing before the Court, gentlemen. Let's proceed.

Mr. Ringole: Do you want to give the stipulation?

Mr. Constine: I don't think I can.

The Court: Well, would you stipulate?

Mr. Riordan: I will stipulate to that, Your Honor.

Mr. Ringole: I don't see how Mr. Riordan's stipulation helps any.

The Court: Gentlemen, I call your attention to the fact that there is nothing before the Court. Let's proceed.

Mr. Constine: Mr. Wu, would you please step forward? [17]

MILTON K. WU

called as a witness on behalf of the Government; sworn.

The Court: Your name, please?

A. Milton K. Wu.

The Court: Spell it.

A. W-u. And then Milton—M-i-l-t-o-n.

The Court: And your last name?

A. Wu is my last name.

Mr. Constine: Would you please speak up, Mr. Wu?

The Court: Spell it.

A. Wu is my last name.

Mr. Constine: He spelled it; W-u, Your Honor.

The Court: I am not familiar, you know, with this Chinese lingo. I have some difficulty with it. Proceed.



(Testimony of Milton K. Wu.)

Direct Examination

Q. (By Mr. Constine): Mr. Wu, would you kindly speak up? What is your business or occupation, sir?

A. I am a Treasury Agent with the Bureau of Narcotics.

Q. And how long have you been employed in that capacity? A. The past year.

Q. And are you now assigned to the San Francisco field office of the Bureau of Narcotics?

A. Yes, I am.

Q. Mr. Wu, have you ever seen the defendant Rocky Yep before? [18] What name do you know this defendant by who sits at my right?

A. Rocky.

Q. Directing your attention to January 15, 1956, did you have an occasion to see this defendant?

A. Yes, I did.

Q. And where did you see him?

A. At the Pagoda Cocktail Lounge.

The Court: Which one?

Mr. Constine: The man identified as Rocky.

Q. Would you kindly describe his clothing, Mr. Wu?

A. That gentleman over there with the blue jacket and khaki pants, Your Honor.

Q. And you saw him at the Pagoda Bar, did you say? A. That's right.

Q. And where is that located? In what city?

A. San Francisco.

Q. In what portion of the city?



(Testimony of Milton K. Wu.)

A. Chinatown.

Q. Do you recall approximately what time of day or night it was that you saw him in the Pagoda?

A. It was in the evening, or approximately 7 o'clock or so.

Q. Did you have a conversation with him?

A. Yes, I did.

The Court: Time and place.

Mr. Constine: Pardon me, Your Honor? [19]

The Court: Time and place. Let us fix that.

Mr. Constine: I will.

Q. What time was that that you had the conversation with him? A. About 7 o'clock.

The Court: And the date?

Mr. Constine: January 15th, Your Honor.

Q. In the Pagoda Bar, is that correct?

Mr. Riordan: If it please the Court, in order that I won't have to constantly interrupt, I want to object to all the past testimony and any further testimony by Mr. Wu along this line as to his meeting with Mr. Rocky Yep and any conversation he had with Mr. Yep on behalf of my client.

Mr. Constine: It is understood you have an objection to the whole series of transactions.

Mr. Riordan: That is right. So I will not interrupt.

The Court: The objection is overruled.

Q. (By Mr. Constine): You say you had a conversation with him; is that correct, Mr. Wu?

A. Yes.

(Testimony of Milton K. Wu.)

Q. Was anyone else present besides yourself and Mr. Yep during the conversation? A. No.

Q. To the best of your recollection would you inform the Court what you said to Mr. Yep and what he said to you? [20]

A. He asked me what I was looking for, and I said, "Well, let's go up to my apartment and we can talk better up there."

So we walked to my car and proceeded up to my apartment.

Q. And where was that located, Mr. Wu?

A. At 225 Chestnut Street.

Q. And what happened there? Was anyone present besides yourself and Mr. Yep? A. No.

Q. Did you have a conversation with him in the apartment? A. Yes, I did.

Q. Would you kindly relate to the Court what you said to him and what he said to you? And will you speak up, please?

A. I asked him about the sample that I received and why it was so small, and he claimed he didn't open it to look at the quantity. And I asked him what happened to my shipment of narcotics that I was promised. He said he sold it. However, he was expecting another shipment within three weeks or so; that his connection was a white seaman working on a freighter which was due in about three weeks.

Q. On this date, January 15th?

A. That's right.

Q. I see. Go on, please.

(Testimony of Milton K. Wu.)

A. He assured me I will have first option on that shipment and he further—I questioned as to the reliability of his connection, and he assured me that he had other connections in [21] the city; that he can always purchase narcotics for me. So I ordered—I told him to get me two ounces to tide me over until the ship came in, and he agreed and said he will locate some for me.

Q. And was that the extent of your conversation for the most part?      A. Yes, sir.

Q. Did you see the defendant again, Mr. Wu, on January 23rd, 1956?      A. Yes, I did.

Q. And where did you see the defendant? Where do you recall you saw him at that time?

A. At the apartment, at the same place where I mentioned before.

Q. That was your apartment?      A. Yes.

Mr. Riordan: May I again—it perhaps is causing confusion; when you say the defendant you are pointing to the defendant Rocky Yep?

Mr. Constine: Yes.

Q. Did you see the defendant Yep again on January 23rd?

A. Yes, at my apartment.

Q. And about what time of day or night was that, do you recall?

A. It was approximately 8:30 in the evening.

Q. And was anyone present in the apartment or in the room where you were besides yourself and Mr. Yep?

A. No, not in the immediate room.

Q. There was someone else present?

(Testimony of Milton K. Wu.)

A. Yes, there was.

Q. And who was that?

A. Another agent on duty.

Q. Was that Agent Wolski? A. Yes, it was.

Q. Is he present in the courtroom?

A. Yes, he is.

Q. And where was Mr. Wolski at that time?

A. He was in a connecting room monitoring our vocal activities.

Q. Did you have a conversation with Mr. Yep at that time? A. Yes, I did.

Q. To the best of your recollection will you kindly tell us what you said to him and what he said to you?

A. He told me that he has made arrangement to deliver me two ounces and he is ready to go, and that he expected to contact his contact approximately 9:15 or so. So he left about that hour.

Q. Did he say anything about his seaman connection or other connection at that time that you can recall now? A. On the 23rd? [23]

Q. Yes.

A. He mentioned his seaman connection is still coming in, due in any time.

Mr. Riordan: I am sorry; I am having difficulty in hearing.

Q. (By Mr. Constine): Would you speak up, Mr. Wu, please?

A. He says that he has to make other—his other connection that is locally to get the stuff.



(Testimony of Milton K. Wu.)

The Court: What stuff?

A. Narcotics, Your Honor.

Q. (By Mr. Constine): I might say that you didn't use the word "heroin," did you?

A. No; in the trade the word "stuff" means the narcotics, Your Honor.

The Court: Stuff?

A. Stuff.

Mr. Constine: Stuff.

Q. So then did he leave at that time?

A. Yes, he left.

Q. What happened next?

A. He returned approximately an hour later and he delivered me two ounces of narcotics.

Q. Did you pay him any money for it?

A. Yes, I did.

Q. And how much did you pay him? [24]

A. I paid him \$1100.

Q. And is that this defendant Rocky Yep who sits at my right? A. Yes.

Q. Those were government funds, I assume?

A. Yes.

Q. What did you do with the narcotics? Did you initial it or what did you do with it?

A. As soon as the defendant left—Yep—I—our covering agents came in and I displayed the evidence to them and we all initialled the evidence for future identification.

Q. I will show you Government's Exhibit 1 for identification. I believe we will have to open this. Well, no. Would you kindly tell us if this packet



(Testimony of Milton K. Wu.)

contains the narcotics that you received from the defendant Yep on January 23rd?

A. Yes, this is the package that I sealed myself.

Q. Did you seal that yourself? A. Yes.

Q. And are your initials on the packet?

A. Yes.

Q. Would you kindly open up the packet then, and tell us whether or not it contains the package that you received from Mr. Yep?

A. Yes, these are the two packages I received. I identify [25] them by my initials on them and that date.

Q. Would you return them to the envelope, please?

Mr. Constine: Does counsel wish to examine them?

Mr. Ringole: I want to look at this one.

Mr. Riordan: If it please Your Honor, I have already objected to all this testimony as being incompetent, irrelevant and immaterial.

The Court: There is a running objection to all of this testimony?

Mr. Riordan: Yes, but I don't know if I mentioned it before—I would like to now add the additional objection to all this testimony as being hearsay against my client.

The Court: The objection will be overruled.

Mr. Riordan: And it is understood that that objection runs to the rest of this testimony?

Mr. Constine: Yes, that is agreeable with me.

Q. Was there any further conversation about

(Testimony of Milton K. Wu.)

meetings that you might have in the future? Was there anything such as that, or was that the extent of your conversation with Mr. Yep?

A. I told him I was leaving town; that I would contact him when I get back in town again.

Q. And what did he say he would do, if anything? A. He said all right.

Q. That was January 23rd; is that correct? [26]

A. That is correct.

Q. Did you have an occasion to see the defendant Yep again on February 1st, 1956, or did you have an occasion to talk to him by telephone?

A. Yes, I did. I called the defendant Yep in the morning and told him I was back in town. So we agreed to meet at my apartment later on in that afternoon.

Q. And did he appear? A. Yes, he did.

Q. What time was that, approximately?

A. Approximately 2 o'clock in the afternoon he came up to the apartment.

Q. And would you mind telling us now just for the purposes of this trial where that apartment was located? A. At 225 Chestnut Street.

Q. How many rooms was the apartment? You might describe it to the Court.

A. This particular apartment has a living room, bedroom, bathroom and a hallway and a kitchen.

Q. Where was the so-called listening post?

A. It was adjacent to the hallway.

Q. And what is a listening post? Would you kindly inform the Court of that?

testimony of Milton K. Wu.)

. A listening post consists of master controls  
are directly connected to microphones located  
each room in [27] this particular apartment.

. So a person at the listening post could hear  
conversations in other parts of the apartment?

. Yes, he can.

. He arrived at your apartment about 2 p.m.?

. That's correct.

. And did you have a conversation with him  
at that time?

. Yes, I told him that I would like to order  
another two ounces of stuff.

. And what did he say?

. He said he will go contact his friend and get

. And so what did he do then?

. So he left.

. Did you see him again that day—Mr. Yep?

. Yes, I saw him again at 4:00—about 4 o'clock  
in the afternoon.

. And where did you see him, Mr. Wu?

. At the apartment.

. At 225 Chestnut Street?           A. Yes.

. That was your apartment?           A. Yes.

. And did he return to the apartment at 4  
o'clock or did he phone you?

. He returned about 4 o'clock. [28]

. And would you kindly tell us what he said  
at that time, if anything?

. We discussed about the price. He claimed  
the market——

(Testimony of Milton K. Wu.)

Mr. Riordan: I am sorry, I simply don't hear any of that.

A. We discussed about the price of the narcotics. He claimed my offer was a little low; that he couldn't get it for any less than six hundred.

Q. (By Mr. Constine): Six hundred what, now?

A. \$600.

Q. For how much narcotics? Two ounces?

A. Per ounce.

Q. Per ounce? A. That's right.

Mr. Riordan: I am going to object to this, Your Honor. Again counsel is leading in his questions.

Q. (By Mr. Constine): I will say did you discuss the price? A. Yes, we discussed the price.

Q. Tell us what was said.

A. He told me that my offer, original offer, was too low; that he couldn't get anything for less than six hundred an ounce and that he couldn't find the original connection. However, he found a secondary connection who can furnish me [29] this stuff for \$600 an ounce.

Q. And what did you say to that, if anything?

A. I told him that was way out of line, I feel that it was a little expensive; to go back and talk to the man and see if he can bring the price down.

So he left, and approximately 4:30 he called me.

Q. This is Yep?

A. That's right. Approximately 4:30 he telephoned me again and told me that he couldn't do anything, that the price would have to stand. I



(Testimony of Milton K. Wu.)

told him that "since I have to leave town, I do want the stuff, go ahead and get it."

And so he said, "O.K."

Q. Did you see him again after that phone call at 4:30?

A. Approximately 5 o'clock he came back and told me he has already passed the order on; however, he won't be able to make delivery until later on that evening. So we set a meeting to meet later on that night at Compton's Restaurant about 8 o'clock, and he departed.

About 8:15 I was at Compton's Restaurant located on Van Ness and Geary. The defendant Yep came in and told me that he was still negotiating trying to get delivery to me; that he was sure he could make it later that evening, for me to wait for his call at my apartment.

Q. So where did you go?

A. So I departed and went back to the apartment. [30]

Q. This is about 8:15 that you met him at Compton's; is that what you testified?

A. That is correct.

Q. Then you and he left? A. That's right.

Q. When did you hear from him next?

A. I heard from him approximately 9:30.

Q. How did you hear from him?

A. He made a telephone call to me and he said—he assured me that he is going to make delivery within the hour and that he was waiting for a man



(Testimony of Milton K. Wu.)

to come back with the stuff now and be sure and wait for him.

Q. Did he say he had met—did he say anything else about the connection?

A. He, he said he had saw the man, that he has placed the order and he is expecting the stuff to return so he could bring it up.

Q. That was about 9:30 that you talked to him?

A. 9:30.

Q. Did you see him or hear from him again—Mr. Yep, that is?

A. I did not see Mr. Yep again until approximately 10:15 that night.

Q. And where did you see him?

A. At my apartment.

Q. Tell us what happened there. This is on February 1st? [31]

A. February 1st approximately 10:15 p.m. he returned to the apartment and delivered to me one ounce of narcotic.

Q. I will hand you Government's Exhibit 2 for identification and ask you whether you have ever seen this packet before, and how can you tell whether you did?

A. This is the package I received on 10:15 on the 1st, and I initialled and sealed it myself.

Q. Would you kindly open the package? You received that from Mr. Yep?

A. That is correct. This is the one that I received on the 1st.

Q. Is there a container in here?

(Testimony of Milton K. Wu.)

A. Yes, there is a rubber container in there that I initialled.

Q. What is this white powder?

A. That is heroin.

Q. How much did you pay—this is the packet that you have just handed me that you received from Mr. Yep on February 1st about 10:15 or 10:30 at night?

A. That's correct.

Q. How much did you pay for this particular quantity of heroin?

A. \$600 in official advanced money.

Q. Where did you and Mr. Yep go then, or what happened after you paid the money? [32]

A. He left. He said he has to return to the man, and left my apartment.

Q. He had to return to the man? A. Yes.

Q. Did he describe what man or say what man?

A. No, he didn't.

Q. Did you have occasion to see Mr. Yep again, Mr. Wu, on February 7th, 1956?

A. Yes, I did.

Q. And where did you see him?

A. At my apartment, 225 Chestnut Street.

Q. And approximately what time, if you can recall now, so we can set the place and time?

A. Approximately 11:30 in the morning.

Q. 11:30 in the morning or evening?

A. Morning.

Q. At your apartment, and that is 225 Chestnut Street?

A. That is correct.

Q. All right. Now did you have a conversation with him?

(Testimony of Milton K. Wu.)

A. Yes; we discussed about future deliveries and general topics of narcotics, and among one of the things he told me was—his friend was going to buy a Cadillac.

Q. Did he describe what kind or what year?

A. He was going to buy a 1955 Cadillac with a canary yellow bottom and a dark top—black top.

Q. And what else did he say, if anything, about this man?

A. He claims that he advised this friend against purchasing such a car because it was too flashy; that his friend was dealing and didn't have any other job and it would just call attention upon himself.

Mr. Riordan: May I again interrupt? I didn't hear that answer at all, Mr. Wu. Again you are dropping your voice down and I am away over there.

May I have the answer, please?

(Answer read.)

Mr. Riordan: May I go to the prior answer before that?

(Answer read as requested.)

Mr. Constine: Now I heard you in your answer use the word "dealing," which the reporter didn't read. Did you use the word "dealing"?

The Court: Just a moment. Dealing?

Mr. Constine: Yes; Mr. Wu used the word "dealing."

Q. How was that used?

(Testimony of Milton K. Wu.)

A. In the trade, dealing means a man who is selling narcotics.

Q. Did Mr. Yep say who was dealing?

A. He said the man who was purchasing the car was dealing.

Q. Did he say whether this was his connection or not?

A. He merely mentioned him as his friend.

Q. Prior to that what had you been talking about? [34]

A. Negotiating for purchase of additional narcotics.

Q. Did you see him again that night—Mr. Yep, that is? A. No, I didn't.

Q. On February the 7th; did he phone you or did you see him on that night?

A. Oh, yes, he called me and told me he couldn't see me until later that evening, and that would be about 7 o'clock in the evening.

Q. I see. Did you see him that evening?

A. Yes, he came up and told me that he has contacted his connection and placed my order. However, he has to wait until he heard from the man; that he left the man at a Mah Jong game.

Q. He said he left the man at a Mah Jong game? A. Yes.

Q. His connection? A. Yes.

Q. What did you and Mr. Yep do then?

A. To kill some time we went out to dinner.

Q. And where did you eat?

A. At this Gino Restaurant on Columbia.



(Testimony of Milton K. Wu.)

Q. Was that the restaurant, the Gino Restaurant?  
A. Yes.

Q. And after dinner where did you go?

A. Then the defendant Yep dropped me off at the apartment [35] and the defendant Yep stated that he was going to join his connection and see if he can get my order filled.

Q. Did you hear from him again that night?

A. Yes, I did. Approximately 8:30 he called and said he hadn't made any positive connection yet but he would contact me later.

Q. Did he contact you later on that night?

A. No, not to my recollection.

Q. Was there any transaction made that night?

Mr. Riordan: I will object to that, Your Honor.  
"Did he contact you again?" "No." "Was that transaction made that night?"

Mr. Constine: I will withdraw the question.

Mr. Riordan: This is an attempt on the part of counsel to either refresh or to testify for his own witness.

Mr. Constine: I stated I will withdraw the question and restate it.

Q. Did you see him again that night on the 7th?

A. Not after we returned from dinner and left.

The Court: We will take a recess now.

(Recess.)

Q. (By Mr. Constine): Mr. Wu, you just concluded testifying about the incident with Mr. Yep on February 7th. Did you see or hear from him on the next day, February 8th——



(Testimony of Milton K. Wu.)

A. Yes, about noontime on the 8th the defendant Yep [36] telephoned me.

Q. Where?

A. At the apartment, 225 Chestnut Street.

Q. Your apartment?

A. Yes, and told me he was with his connection right then and that they are trying to get the stuff to make delivery to me; that he will call me later on in the afternoon.

Q. Did you hear from him or see him again on February the 8th—Mr. Yep?

A. Yes, he called me that evening and said they haven't made any headway yet; that he will call me again next day.

Q. Now, directing your attention to February 13, 1956, did you have an occasion to either see Mr. Yep or speak to Mr. Yep, and if you did, when was the first time on that day? Give me the time and place.

A. On the 13th early in the morning the defendant Yep came to my apartment, 225 Chestnut Street, and we discussed about this long delay, he has been keeping me waiting for three or four days now and I questioned him as to his reliability of his connection, got his narcotics first, why couldn't he get me any more; he told me that he could get it for me at any time I wanted. He said he trusts his connection he is working with, the man is reliable, not only a good connection but a good friend of his; he used to be an ex-bookie, he is well off, he is loaded, is the word he used, and that he used [37]

(Testimony of Milton K. Wu.)

to work in a cannery and no one knows the man is dealing, and he is a perfectly good connection to have.

I said, "Be so good as to call him and get him on the phone and get my narcotics." He says he can't call the man because he didn't have a telephone; he would have to see the man.

Mr. Riordan: Again I am going to object vigorously and renew my objection on behalf of Ong as to the introduction of hearsay statements which are made obviously—and when you start referring to some other man I think it is quite evident that they are attempting to refer to the co-defendant here which must be Ong. There has been absolutely no proof of any conspiracy, so therefore any acts or declarations on the part of Mr. Yep which come to this Court through Mr. Wu are highly objectionable at this point as being introduced.

Mr. Constine: May it please Your Honor, this objection is running to all the testimony, as I understand it, until we put the other agents on the stand.

The Court: Unless it is connected up, it will go out. Your objection at this time will be overruled.

Mr. Ringole: I will make the same objection.

The Court: Same ruling.

Mr. Constine: Are you objecting to this in regard to Mr. Yep?

Mr. Ringole: Yes. [38]

Mr. Constine: I might state that Mr. Yep has plead not guilty to a substantive offense, and this

(Testimony of Milton K. Wu.)

would be perfectly admissible in regard to the transaction of February 1st.

Mr. Ringole: You can't conspire with yourself.

Mr. Constine: However, there is a subsequent count going to trial at this time, Your Honor, count one.

The Court: There is nothing before the Court, gentlemen. Proceed.

Q. (By Mr. Constine): This was a conversation on the morning of February 13th you have just related; is that right? A. That's correct.

Q. And as I understand you, he said he couldn't phone his connection because he didn't have a phone? A. That's correct.

Q. What happened after that? Did he leave or did you leave? Tell us what occurred.

A. Yes, he left to see what he can do. I received a phone call from him later on that evening. He told me that he couldn't—he didn't expect that he could deliver that night and I told him that I was leaving town, that "I wish you would give me a positive statement whether you could or could not get the stuff."

He was on the telephone at that time and I overheard him turn around and address——

Q. You don't know if he turned around, do you?

A. No, I don't.

Q. Just tell us what you heard during the telephone conversation.

A. I heard over the telephone he called someone by the name of Johnny, and then they spoke some-

(Testimony of Milton K. Wu.)

thing which I did not hear. And then he came back on the phone and told me, he said definitely he couldn't get anything that evening.

Q. And did you hear any—was that the extent of the telephone conversation? A. Yes.

Q. Or did you hear anything else? A. No.

Q. Directing your attention to February 17, 1956, did you have occasion to see the defendant Yep or talk to him by phone or in person?

A. Yes, on February 17th about mid morning the defendant Yep and myself was at the Modern Cafe located in Chinatown.

Mr. Riordan: What date are we referring to now?

Mr. Constine: February 17th.

Mr. Riordan: February 17th.

A. We discussed the delivery of narcotics and the defendant Yep told me that he has a shipment lined up for me; however, the man required payment in advance. I told him that I didn't do business that way; that I liked to see the merchandise before I buy it, and that under no circumstances I [40] was going to pay for something I have not seen. He told me that his other connection was willing to put up a 1955 Cadillac as collateral, was willing to sign the pink slip over as collateral for the shipment, and he can get me that particular shipment. I told him I didn't care how he made the arrangements as long as I could get the narcotics and look at it, and if I like it I will pay him cash on the line.



(Testimony of Milton K. Wu.)

So he said he was going to go back and see if he can set it up.

Q. (By Mr. Constine): Directing your attention to two days later, on February 19th, did you have an occasion to see or hear from the defendant Yep again concerning this previous conversation?

A. Yes, on the 19th the defendant Yep came up to my apartment at 225 Chestnut Street, and again I questioned the defendant Yep as to the reliability of his connection again. He told me that he is expecting a shipment in on a ship; that if that failed to arrive he still has this other deal where he had this friend putting up the Cadillac as collateral; that we can always count on that in case we missed the boat shipment.

Q. You saw the defendant Yep on February 21st, did you not?      A. Yes, I did.

Mr. Constine: And I might say at this time, Your Honor, I intend to prove a transaction through Mr. Wu with Mr. Yep. We will offer this against Mr. Yep only at this time, the [41] February 21st transaction, not against Mr. Ong. However, since Mr. Yep is going to trial in count 1 of the indictment we intend to show all the transactions with him to show similarity of offenses.

Mr. Ringole: May it please Your Honor, I want to state this: I don't think the offer is quite fair. On the heroin count if he wants me to stipulate about that heroin, I shall be glad to do so, but that heroin was the subject matter of this defendant's



(Testimony of Milton K. Wu.)

trial before Judge Harris on which he was convicted.

Mr. Constine: That's right.

Mr. Ringole: Therefore it is not proper that it be used here. They are trying to pile up offense after offense; it would be trying him again, placing him in jeopardy for that other offense for which he stands convicted.

Mr. Constine: He has plead not guilty to a sale, a transfer of heroin in this case on February 1st, 1956.

Mr. Ringole: But they proved that sale, Your Honor.

Mr. Constine: And we are showing all the similar transactions to prove the guilt.

The Court: Just a moment, let's proceed in the proper way here. Give him an opportunity to object.

Mr. Constine: He has not plead guilty to it, Your Honor. He plead not guilty that he sold heroin on February 1st, so we are going to show all the transactions to show similar [42] offenses. That's all we are doing here, and that's why I am offering this particular sale against Mr. Yep only, not against Mr. Ong. I am trying to be as fair as I can to this man.

Mr. Ringole: May it please Your Honor, in order to save time I advised Your Honor that he would plead guilty to that count 1.

The Court: Is that the count dealing with the sale?

Mr. Ringole: Yes. Your Honor took that under

(Testimony of Milton K. Wu.)

submission. I will admit that he is guilty. The testimony is in on that count. It is in on that \$600 deal. That was the offense charged in count 1, and there is no need of taking up the time and going into all these other transactions.

The Court: This is a serious charge, and if it takes a month we will be patient and go along. Let's get on. There is nothing before the Court.

Mr. Constine: To save time, does counsel stipulate that on February 21, 1956——

Mr. Ringole: I won't stipulate in view of my objection. I will stipulate to the physical character of the heroin and all that, but I won't stipulate that you can introduce it in evidence because it wouldn't be fair to this man.

Q. (By Mr. Constine): Did you see Mr. Yep again on February 21, 1956?

A. Yes, I did. [43]

Mr. Ringole: That is objected to as immaterial and as far beyond this indictment, Your Honor. This indictment charges overt acts——

Mr. Constine: It was in the same month, February 1st, as the other transaction took place. This isn't six months later, Your Honor.

Mr. Ringole: The transaction with which he is charged took place on the first day of February 1956 to which he has pleaded.

Mr. Constine: If a defendant makes numerous sales of narcotics, all that is quite relevant to show that he is guilty of the offense on February the 1st.

The Court: Showing intent or what?

(Testimony of Milton K. Wu.)

Mr. Constine: To show his intent, his plan, to show a pattern of crime, similarity of offenses, schemes.

Mr. Ringole: We have admitted his guilt on February 1st of the sale of \$600.

The Court: Overruled. Let us proceed, gentlemen. Protect your record.

Q. (By Mr. Constine): Was there a transaction on February 21st involving Mr. Yep?

A. Yes, in the evening approximately 9:15 I received approximately two and a half grains from the defendant Yep as a sample.

Q. And did you see him again that night? [44]

A. Yes, sir; approximately 10:40 the defendant Yep delivered to me one pound of heroin.

Q. Did you pay him money for that?

A. At that particular time the defendant Yep was placed under arrest and the heroin was seized.

Mr. Constine: Will counsel stipulate that the heroin about which Mr. Wu has just testified has already been introduced in evidence in another case and that we need not present it here, and you will agree that that was heroin that was sold?

Mr. Ringole: Yes, provided you will stipulate that my objection will not be waived by so doing.

Mr. Constine: Oh, no, you are still objecting to the irrelevancy of the testimony.

Mr. Ringole: Yes, sure.

Q. (By Mr. Constine): And I might say on these transactions, Mr. Wu, between the transaction of January 23rd, the transaction of February the

(Testimony of Milton K. Wu.)

1st, the transaction of February 21st—are those the transactions you have testified about?

A. Yes, sir.

Q. Were there any tax stamps of any kind on any of the narcotics that you received from Mr. Yep?

A. No, sir, there was not.

Q. Did you see the defendant Johnny Ong at any time prior to his arrest? [45]

A. No, sir.

Mr. Constine: No further questions, Your Honor.

Mr. Ringole: No questions.

The Court: Any questions of this witness?

Mr. Riordan: Yes, Your Honor.

#### Cross Examination

Q. (By Mr. Riordan): Now, Mr. Wu, you have given us a very detailed description of the various acts that have occurred. Did you make notes of these matters as you went along in this work that you were doing?

A. Yes, I did; I made reports.

Q. I see. You made those reports out yourself; is that correct?

A. Yes, I did.

Q. Did you also keep a notebook in which you made reports, or rather, notes on the transactions?

A. No, I didn't.

Q. Would you after a—let us take the dealings on a particular day; let us take a particular day. Let us take January 15, 1956 in which you saw the defendant Rocky Yep. You testified that there was some discussion in your apartment pertaining to procuring heroin or narcotics and that you asked



(Testimony of Milton K. Wu.)

for a sample and you said why was it so small, what happened to the shipment—you recall your testimony in relation to February 15th, is that correct?

Mr. Constine: January 15th.

Mr. Riordan: January 15th; I am sorry.

A. Yes.

Q. (By Mr. Riordan): Now let's take that particular day. At these various conversations and times of these conversations, would you after Mr. Yep left your apartment make notes at that time?

A. No, sir.

Q. When would you make your report on the transaction for this particular day?

A. That particular evening if the time permits, or the following morning.

Q. And would you make this in longhand or would you type it, or just how would you do it?

A. It is typed up in official reports.

Q. I know, but you would have to transcribe it, you would have to give it to someone else; is that correct?

A. It all depends; sometimes I typed up my own reports, sometimes I dictated to a clerk.

Q. Have you reviewed these reports prior to your testimony today?

A. No, sir, I have not.

Q. Have you reviewed these notes since, let us say, February 23rd of this year?

A. Outside of various pre-trial conferences with my [47] attorney, I have not.

Mr. Constine: May it please your Honor, I might



(Testimony of Milton K. Wu.)

say that the Narcotic Bureau submits a narcotic report. There is an investigative report submitted, but I can't see the relevancy of that. I have got my own report. If that is what counsel is discussing, whether I discussed the report with Mr. Wu——

Mr. Riordan: I haven't even gone into that, your Honor. Under cross-examination I think I have a right to delve into the validity of this man's memory at the present time.

The Court: Overruled.

Q. (By Mr. Riordan): When do you think was the last time you have reviewed these various reports that you made up?

A. Well, what particular manner do you mean by reviewed? Like I said——

Q. Read it over.

A. I discussed it at length with the attorney at pre-trial conferences, if you consider that a review.

Q. In order to discuss it, did you read your reports or did you merely hand them to the attorney?

A. No, I merely stated the facts to the attorney at that time.

Q. And how did you state these facts? After having read these reports?

A. No; I mean he would corroborate his report.

Q. And when was the last time this occurred?

A. We had many trial conferences within the last week.

Q. I just want the last one.

A. The last two or three days.

(Testimony of Milton K. Wu.)

Q. Last two or three days. Now you testified on the first day of February, 1956, you met Yep at Compton's, is that correct?

A. In the evening?

Q. Yes; approximately 8:15, my recollection is.

A. Yes.

Q. Is that right?           A. About 8:15.

Q. Are you sure?

Mr. Constine: Excuse me. Would you kindly raise your voice, Mr. Wu?

The Witness: Your Honor, I wish to apologize to the Court for speaking so low. I worked on assignment all night last night and I guess I am dropping off a little.

The Court: Well, you are pretty husky; you will have no trouble at all. Just speak up.

The Witness: Yes, sir.

Mr. Ringole: I can't hear you, either.

Mr. Riordan: Q. Are you sure at this time it was February 1, 1956 that you saw Mr. Yep at Compton's at approximately 8:15 p.m.? [49]

A. Yes, sir.

Q. Isn't it true at that time that he made a delivery to you?           A. Yes, sir.

Q. It is?           A. At that time?

Q. Yes.

A. You mean at that particular time and address?

Q. Yes.           A. Oh, no, sir.

Q. And was he to make a delivery to you at that time?

(Testimony of Milton K. Wu.)

A. No, sir; we were negotiating for a delivery.

Q. You had negotiated previously, is that correct, that day?

A. During the day, yes, sir.

Q. And why, as far as you know, was there a necessity for further negotiation at 8:15 at Compton's?

A. Just what he told me, that he is endeavoring to get delivery and he has talked to the man, and he is just keeping me informed of it because I kept saying I am in a hurry, I want to leave town, I don't want to wait around all day for him.

Q. At approximately 10:15 that evening Mr. Yep delivered approximately one ounce of heroin at your apartment; is that correct? [50]

A. Thereabouts, yes, sir.

Q. What was the agreed price prior to the delivery for that ounce, do you recall?

A. I made—we made counter-offers and proposals on the price, but I paid him a total of six hundred for the delivery.

Q. That isn't what I asked you. I asked you, before the delivery, before he came to your apartment had you agreed upon a price for the purchase of one ounce of heroin?

A. Offers and counter-offers.

Q. Then is it my understanding there was no agreed price for this one ounce of heroin before he walked into your apartment with the heroin?

A. There was an agreed price before he walked in.

(Testimony of Milton K. Wu.)

Q. There was? A. Uh-huh (affirmative).

Q. What was that price?

A. I offered three hundred fifty or three hundred seventy five and he came back saying it will cost me six hundred or thereabouts.

Q. And did you just let it stand at opposite ends of the pole? A. What do you mean?

Q. Well, you offered three hundred fifty, I understand; he said, "I can't get it except for \$600." Is that right? A. Yes. [51]

Q. And then he merely left, or did you come to some agreement as to what you would pay him for one ounce of heroin?

A. Oh, I see what you mean. Well, after he said he couldn't get it for that I told him he has me over a barrel, I wanted to leave town and I needed the stuff before the ship comes and I would have to take it at his price.

Q. And what was that price—\$600 you agreed?

A. I paid him a total of \$600.

Q. No, that isn't what I asked you. I said, what was your agreement? Was it \$600 for one ounce of heroin?

A. Well, I paid him a total of \$600. Is that what you are getting at?

Q. No, I mean this, Mr. Wu: Let us assume that you sell automobiles.

The Court: We are dealing with poison here; we'd better stay with it.

Q. (By Mr. Riordan): There is sometimes a difference between the prior agreement for the pur-



(Testimony of Milton K. Wu.)

chase of an object and the exact amount of currency that is exchanged for the object. Now as I understand, as you stated, you actually paid him \$600.

A. Yes.

Q. Was that the amount you agreed to purchase this one ounce of heroin from Mr. Yep for?

A. Well, no, there was offers and counter-offers and my [52] last remark to him was if that is the price he wanted, he has me over a barrel and I will have to take it.

Q. Were you then referring to the \$600?

A. At the time of counter-offers there was a lot of figures thrown around. I just told him outright, "Well, whatever it is, bring it up and I will pay for it." He has me over a barrel, I got to leave town, I need the stuff; therefore, bring it up and I will pay for it.

Q. And by that did you mean that you would pay him \$600 for this amount of heroin?

A. Whatever price that was agreed upon.

Q. I know, but only you can tell me at the present time what the price agreed upon was, and that's all I am trying to get from you, Mr. Wu.

A. Well, like I told you, we were dickering for the merchandise.

Q. I appreciate that.

A. And when he told me that my offer was too low, it must be higher than that, I told him whatever the price is I will have to take it because he has the advantage over me.

Mr. Constine: I think that is the testimony, your



(Testimony of Milton K. Wu.)

Honor. He has said it three times. It has been asked and answered.

Mr. Riordan: But then I asked him, is it true that your understanding of what the amount or the agreed amount for this one ounce of heroin was to be is \$600; is that correct? [53]

A. Well, my understanding—

The Court: Just a moment. He has testified what the fact was. The testimony shows that he paid \$600 for it. That will be sufficient for all purposes.

Now we will proceed, gentlemen.

Mr. Riordan: Very well.

Q. Let me put this question directly, then, Mr. Wu: Isn't it true that you agreed to pay \$550 for that one ounce of heroin before the delivery was made? Does that refresh your recollection at all?

A. I don't recall any agreement as to any specific price around there; like I said, we were making offers and counter-offers there.

Q. On the first day of February 1955—or 1956, rather—Mr. Wu, you stated that after the sale was made Rocky Yep left; is that correct?

A. Yes.

Q. Did he state to you just where he was going?

A. He said he has to return to the man.

Q. Just said he has to return to the man?

A. Yes.

Q. Did he state to you when he came in just where he had come from prior to making this sale?

A. Not to my recollection.

Q. On February 1, 1956 in relation to this con-

(Testimony of Milton K. Wu.)

versation and [54] meeting at your apartment around 10:15 where the heroin was delivered, were there any recordings being made of this conversation by the Government?

A. Not to my knowledge.

Q. Was there anyone else connected with the Government listening in on this conversation?

Mr. Constine: Would you state what conversation that is?

Mr. Riordan: I am referring to the conversations at your apartment at 10:15 where the heroin was sold, you testified to, on February 1, 1956.

Mr. Constine: This is the evening delivery?

Mr. Riordan: 10:15 p.m.

Q. Was anyone listening in that time as far as you know?

A. Yes, we had an agent on duty.

The Court: He had an agent on duty.

Mr. Riordan: An agent on duty.

Q. Was he merely listening or did he have some mechanical means by which he was recording this conversation?

A. I don't recall whether he recorded the conversation or not; he was listening.

Q. He was listening? A. Yes.

Q. Then I can take it, Mr. Wu, that since February 1, 1956, you have never heard any recording in relation to the events that occurred in your apartment at 10:15 on February 1, 1956; [56] is that correct? A. Not to my recollection.

Q. You have never heard any, because other-

(Testimony of Milton K. Wu.)

wise if you had heard some, then you would know that recordings would be taken, is that correct?

A. I don't recall hearing any.

Q. You don't recall hearing any. On February 7, 1956, you met with Rockey Yep, is that correct?

A. Yes.

Q. And where was your first meeting?

A. At the apartment.

Q. Approximately what time was that?

A. Late morning, around 11:30.

Q. Around 11:30? A. Yes.

Q. What was the purpose of that particular meeting?

A. I was negotiating for additional deliveries of narcotics.

Q. How much were you trying to get?

A. I ordered a couple of pieces.

Q. I am sorry.

A. I ordered a couple of pieces.

Q. How much? A. Two ounces.

Q. Two ounces. How much were you paid for those two ounces? [56]

A. We didn't exactly agree on the price at that time.

Q. Did you make an offer to him as to how much you would pay?

A. We discussed about the qualities of the previous stuff and I left it open that if the quality measures up to previous deliveries that I was willing to pay the same amount.

Q. How much was that amount to be?

(Testimony of Milton K. Wu.)

A. Well, whatever the previous transaction was.

Q. Was that \$600?

A. Depending, if the quality was as good as the first time he made deliveries, it would be a little less or a little more. In other words, the price was left open until I myself checked the narcotics to see if it was as good as the first delivery or the second delivery.

Q. Now had you purchased any narcotics from Rockey Yep prior to February 1, 1956?

A. Yes, on January 23rd.

Q. How much did you pay per ounce for that?

A. I paid him a total of \$1100.

Q. How many ounces were there?

A. Two ounces.

Q. Two ounces?           A. 62 grains.

Q. That was \$550 per ounce, is that correct?

A. Approximately. [57]

Q. On February 1, 1956 you also received one ounce, is that correct?

A. One container, that's right.

Q. And at that time you paid him \$600; is that correct?           A. Yes.

Q. Was the quality of narcotics you received on January 23rd the same as the quality you received on February 1st?

Mr. Constine: Well, that is if this witness can answer that question, your Honor. That might be a question for a chemist to answer; I don't know if he is qualified to. He can answer it if he knows.



(Testimony of Milton K. Wu.)

Mr. Riordan: He is the man who testified that he was testing the quality and the price——

Mr. Constine: He didn't say he did it himself.

Mr. Riordan: ——would depend upon the quality received.

The Court: What is the question? Just a moment; reframe your question.

Mr. Riordan: The question is whether the quality of the heroin received on February 1 is the same as the quality of the heroin he had received on previous occasions.

The Court: If you know, you may answer.

A. I am not qualified to make a decision on that; I am not a chemist.

Q. (By Mr. Riordan): On February 7th, 1956 you were negotiating to purchase two ounces; is that correct? [58] A. Yes.

Q. And he was asking how much for these two ounces?

A. No price was set. Again, like I said——

Q. It was agreed then that you would pay the same as you had previously paid if it was the same quality?

A. Depending on the quality.

Q. Were you to pay him the money upon the delivery of the heroin? A. Yes, I was.

Q. And there was no question raised between the two of you as to your lack of faith at that time in his delivering this heroin, was there?

A. Well, what do you mean by that?

Q. Well, you didn't doubt that he was going to



(Testimony of Milton K. Wu.)

make this delivery if a deal was made between the two of you, did you?

Mr. Constine: I don't see the relevancy of what the agent thought at that time, your Honor; it calls for an opinion and conclusion whether he doubted Yep was going to deliver——

Mr. Riordan: This is preliminary.

Mr. Constine: I will withdraw the objection.

A. Just another negotiating for a buy. I don't know what you are getting at.

Mr. Riordan: On February 7th were you asking Rockey Yep to bring you any sample of the prospective purchase? [59]

A. I don't recall asking for any samples.

Q. And did you inform him that you did not have sufficient money to make a purchase of two ounces of heroin in the sum of \$1200 or \$1100?

A. I don't recall saying that.

Q. Now Mr. Yep informed you that a friend of his was about to purchase a 1955 Cadillac; is that correct? A. That is correct.

Q. Did he say he had purchased it or he is to purchase?

A. He said his friend was considering getting one.

Q. I see. About what time in the day did this conversation occur in relation to the Cadillac?

A. In the morning.

Q. In the morning. About what time, 11 o'clock?

A. Yes, after he arrived.

Q. What time was that?

(Testimony of Milton K. Wu.)

A. Around maybe late morning or early noon.

Q. He merely said, "A friend of mine is thinking of buying a 1955 Cadillac"; is that correct?

A. Words to that effect, yes.

Q. And he described the color of the particular Cadillac; is that correct?      A. Yes, he did.

Q. He didn't identify this man by name, did he?

A. No, he didn't. [60]

Q. Now on February 13th you stated that Rocky Yep telephoned a friend; is that correct—Rocky Yep telephoned a friend in your presence?

Mr. Constine: That isn't the testimony.

Mr. Riordan: I'm sorry; isn't it? I believe the testimony is on February 23rd Rocky Yep made a telephone call from your apartment.

Mr. Constine: The testimony is that he asked Mr. Yep to phone the connection but that Mr. Yep said his connection didn't have a telephone. That is the testimony.

Mr. Ringole: That is correct.

Mr. Riordan: When you asked Rocky Yep to telephone his connection and he stated that his connection did not have a telephone, were you referring at that time to his local connection that you have referred to?

A. I was saying that I have asked the defendant to make a telephone call to see if he could hasten the delivery of narcotics and he told me he had to see the man because the man did not have a telephone.

(Testimony of Milton K. Wu.)

Q. And how did he describe this man that he was to make a connection with? How did he describe him to you, if he did?

A. He told me that this connection friend of his is a man of means, he is dealing, he was an ex-bookie; however, charges were dismissed for lack of evidence, and things of that sort. [61]

Q. What are the things of that sort, please?

A. The reason that the story came out, after I questioned the reliability of his connection I had been waiting for three or four days for delivery. So he told me he trusted the man, he was a friend of his, was a man of means, used to work in a cannery, was an ex-bookie but was never convicted of it, and a man of means.

Q. Now since Mr. Ong has been indicted, Mr. Wu, have you looked into his background as to what work he has done in the past?

A. No, sir.

Q. Has anyone ever told you about any work that he has done in the past? A. No, sir.

Q. You have never discussed or seen any records in relation to what past employments Mr. Ong has had; is that correct? A. That is correct.

Mr. Constine: Are you calling for his own personal knowledge or for what he knows from the other agents regarding whether this man has a job or not? Do I understand you are calling for hearsay? If that is what it is, the witness will testify to it.

The Witness: He is asking for hearsay?

(Testimony of Milton K. Wu.)

Mr. Constine: Are you calling for his knowledge of his background? [62]

Mr. Riordan: I will let the record stand just as it is.

The Court: There is nothing before the Court. Let us proceed, gentlemen. There is nothing before the Court.

Mr. Riordan: I have nothing further.

### Redirect Examination

Q. (By Mr. Constine): Mr. Wu, just one question. Counsel asked you on cross-examination about the conversation of February the 7th when Mr. Yep in your apartment, I believe, about 11:30 or so, was talking about this '55 Cadillac that his friend was purchasing. He said more than that, as I understand your testimony on direct examination; he used the word "dealing," didn't he?

A. He said this man was dealing and shouldn't buy such a flashy car.

Q. On February 13th did he say that was the same man—is that the same man he had talked to you previously about on the 7th?

A. Yes, he did.

Q. And did he refer to the February 1st connection? Isn't that your direct testimony—or the February 1st transaction when you questioned him concerning his reliability? A. Yes, he did.

Mr. Riordan: I object to this, your Honor. This is leading.



(Testimony of Milton K. Wu.)

Mr. Constine: Q. What did he say on February 13th? [63]

Mr. Ringole: He has already answered that.

Mr. Constine: They went into that and I want the record to be clear about the connection on February 1st.

Q. On February 13th did he describe his February 1st connection?

A. I questioned him as to the reliability of the man.

Q. Of what man are you talking about?

A. The man that he got the narcotics from on the 1st of February; if he could deliver on the 1st why it has taken so long to deliver it now.

Q. And what did he say about this man?

A. Then the defendant Yep told me that he trusted the man, he was a friend of his, and he described him. He is dealing; he used to work in a cannery; he is well off; no one knows he is dealing; he is cool.

Mr. Riordan: He is what?

A. Cool. In other words, no one is aware of his dealing.

Q. Did he describe a type of vehicle that he was driving? A. A Cadillac.

Q. The year? A. 1955.

Mr. Constine: No further questions.

Q. (By Mr. Riordan): My understanding on your direct examination, Mr. Wu, was that you had never seen Mr. Ong, is that correct, prior to the arrest? [64]



(Testimony of Milton K. Wu.)

A. No, I have not.

Mr. Constine: Is that all?

Mr. Riordan: Nothing further.

Mr. Constine: Thank you. For the time being you are excused.

Does your Honor wish to take the noon recess?

The Court: Shall we adjourn for lunch, or do you want to go on?

Mr. Constine: We would be happy to have lunch, your Honor.

The Court: Then we will adjourn until 2:00.

(Whereupon a recess was taken until 2 p.m. this date.) [65]

Afternoon Session, Wednesday,  
April 25, 1956 at 2 P.M.

The Court: Proceed.

Mr. Constine: Mr. Hipkins, please.

BRUCE E. HIPKINS

called as a witness on behalf of the Government;  
sworn.

The Court: Your full name, please?

A. Bruce E. Hipkins, H-i-p-k-i-n-s.

The Court: Your business or occupation?

A. Federal narcotic agent, sir.

The Court: How long have you been so engaged?

A. Approximately a year and a half.

The Court: Before that?

A. Five years in police work—deputy sheriff.

(Testimony of Bruce E. Hipkins.)

The Court: Where?

A. Santa Clara County.

The Court: Take the witness.

Direct Examination

Q. (By Mr. Constine): Mr. Hipkins, you are assigned to the San Francisco field office; is that correct?

A. Yes, sir.

Q. And directing your attention to the day of February 1st, 1956, did you have an occasion to see the defendant Yep who sits at my right? [66]

A. Yes, sir.

Q. And when did you first see him on that day? Where and when?

A. Approximately 2 o'clock p.m. he drove up to 225 Chestnut Street, San Francisco.

Q. And what address was that?

A. That was the apartment where Agent Wu was at.

Q. And what did you see Yep do?

A. I next saw Yep drive from 225—

Q. Did you see him enter the apartment?

A. No, I saw him drive up to it.

Q. Drive up to it? A. Yes.

Q. Then did you see him get out of his car?

A. No.

Q. And what was the next thing you saw?

A. I observed Rocky driving from the address.

Q. And how long was that after when you first saw him?

A. Approximately 15 or 20 minutes.

(Testimony of Bruce E. Hipkins.)

Q. Then you didn't keep him under constant surveillance; is that right? A. That's correct.

Q. Then you saw him leave the apartment?

A. Yes.

Q. And what did you observe then? Where did he go? [67]

A. He went directly to 83 Winfield Street.

Q. And what address is that?

A. That is the address of the defendant Johnny Ong.

Q. That is the gentleman who sits at my right?

A. Yes, sir.

Q. And what happened then? Did you see him enter?

A. Yes, I saw him enter a doorway there.

Q. Did you see him leave?

A. Yes, I saw him leave there and drive to Mason Street between the intersection of Jackson—

Q. Did you have an occasion to see the defendant Johnny Ong on that day?

A. Yes, I saw him at approximately 3:55 p.m. driving a '51 Cadillac with a dark top and light bottom.

Q. Do you know the license number?

A. CKC 040.

Q. And what happened at that time that you observed?

A. Well, at that time the defendant Yep got into the car.

(Testimony of Bruce E. Hipkins.)

Q. Well, did you see the defendant Yep, too?

A. Yes, he was parked there and he got into the car with the defendant Ong.

Mr. Riordan: If it please the Court, again as to all the testimony that has been had in the past in relation to this witness, I hereby object to the same as being incompetent, irrelevant and immaterial and as to defendant Ong being [68] hearsay.

Mr. Constine: This time, your Honor, he is testifying to what he saw the defendant Ong do. That is not hearsay.

Mr. Riordan: That goes to competency and relevancy; hearsay insofar as seeing Yep make these various trips. I object to that on the ground of the fact that there is no foundation laid as to any conspiracy being involved and presented at this particular time.

The Court: The objection will be overruled.

Q. (By Mr. Constine): Let me understand this so that it is clear. You say the defendant Yep was parked; is that where you observed him?

A. Yes.

Q. And where was he parked and in what kind of a car?

A. He was parked in his 1952 Mercury, license No. CKB 445.

Q. Where?

A. On Mason near the intersection of Jackson.

Q. About what time was this?

A. At approximately 3:55 I saw the defendant Johnny Ong drive up in his Cadillac.

(Testimony of Bruce E. Hipkins.)

Q. What happened?

A. At that time the defendant Yep got into the car with Ong and they drove around for approximately five minutes.

Q. What happened next? What did you see next?

A. I next saw the defendant Yep get out of the car and get [69] into his.

Q. And who did you follow, if either one of them?

A. I followed the defendant Ong to Chinatown where he parked his car on Washington near Waverly.

Q. Did you see the defendant Yep again on that day after the meeting at 4 o'clock on the 1st?

A. Yes, I saw the defendant Yep leaving the apartment at 225 Chestnut Street approximately 4:30 p.m.

Q. And did you follow him?

A. Yes, he went to the intersection of Francisco and Powell.

Q. And what happened?

A. He got out of the car and was lost to my view; he was covered by other agents.

Q. Then when did you see him again?

A. Approximately 5 o'clock he drove back to 225 Chestnut Street.

Q. And that was Mr. Wu's address, is that right?

A. That is correct.

Q. Did you have an occasion to see either the



(Testimony of Bruce E. Hipkins.)

defendant Yep or Ong on the evening of February the 1st? When did you see him that evening?

A. Yes, I saw the defendant Yep riding in the defendant Ong's Cadillac at the vicinity of John and Mason Street.

Mr. Ringole: Pardon me. Where is that?

A. John, J-o-h-n. That is a short street that runs between [70] Mason and Powell, one block.

Mr. Riordan: Did you say the time of that, please?

A. Approximately 7:30 p.m.

Q. (By Mr. Constine): Did you observe Mr. Ong at that time?

A. Yes, he was driving his Cadillac.

Q. And how long a time did you keep both of them in your observation, do you recall?

A. Oh, he drove around and then returned the defendant Rocky to the vicinity of John and Mason.

Q. What happened? Did the car stop?

A. The car stopped and the defendant Rocky got out.

Q. When did you next see the defendant Yep?

A. At approximately 8:30 p.m. leaving Compton's Restaurant, or driving from Compton's Restaurant, at which time he drove to the intersection of Jackson and Mason.

Q. And what happened there, would you kindly tell us?

A. He got out of his car and walked across the street and was lost to my view. I did not see him

(Testimony of Bruce E. Hipkins.)

again for approximately five minutes when he returned to his car.

Q. Did you see the defendant Ong?

A. No, I didn't see him at that time.

Q. Did you see his automobile at that time?

A. I couldn't say definitely; I saw a Cadillac of his same color and year drive away from there, but I couldn't say it was definitely him or his car.

Q. There were other agents present, though?

A. Yes.

Mr. Riordan: In view of the last statement, your Honor, I will ask that that answer be stricken from the record.

Mr. Constine: I just asked him whether he saw it and he said he couldn't be sure.

Mr. Riordan: He said, "I don't know if it was Ong's car or not; it was the same color."

Mr. Constine: That is all right with us. That is an answer, and he doesn't know.

The Court: Let the record stand. The objection will be overruled.

Q. (By Mr. Constine): What did Yep do after you saw this Cadillac drive away, whoever it was?

A. He got into his car and stayed there for a while, and back onto the street corner in just a period of an hour or a little better where he was in the car or on the street, just walking back and forth between the two. And at one time he walked across Jackson out of view and then stayed for

(Testimony of Bruce E. Hipkins.)

three or four minutes and then came back to the car.

Q. Then what was the next thing that happened? Did you see the defendant Ong again on that night?

A. Yes, I saw the defendant Ong at approximately 10 o'clock p.m. driving his '51 Cadillac.

Q. And where was that? [72]

A. He was driving it west on Jackson close to the intersection of Jackson and Mason.

Q. Is this where Yep was waiting?

A. That is correct.

Q. And where did you see Yep, would you kindly inform the Court?

A. The defendant Ong parked the automobile on Jackson right on the corner of Mason and walked across the street with a child in his arms.

Q. This is at 10 o'clock at night?

A. Yes, sir. And as he got across the street he was joined by the defendant Rocky and the two of them walked into the doorway at 1003 Jackson. They stayed in there for approximately a minute. Then the defendant Rocky came out of the doorway, got into his Mercury and drove directly to 225 Chestnut Street.

Q. That is Mr. Wu's apartment?

A. Yes, sir.

Q. And what happened next with Mr. Yep?

A. In the space of ten minutes or so I next saw the defendant Yep driving from 225 Chestnut Street back to the same corner, Jackson and Mason,

(Testimony of Bruce E. Hipkins.)

and we were slightly a little bit behind. By the time we got up close we saw the defendant Rocky and Ong there get into the Mercury and drive around for—drive around several blocks in the space of just a few minutes. [73]

Q. Then what happened?

A. Then the defendant Ong was returned to the corner there of Jackson and Mason, at which point the surveillance discontinued.

Q. Now, Mr. Hipkins, directing your attention to February 7, 1956, a few days later, did you have an occasion to see the defendant Yep?

A. Yes, approximately 11:20 I saw him—11:20 a.m. I saw the defendant Yep go to 225 Chestnut Street.

Q. Mr. Wu's?            A. Right.

Q. Yes?

A. And he stayed there until approximately 12 o'clock. At that time I followed him from 225 Chestnut Street to Bay Meadows Racetrack.

Q. Did you follow him to the Bay Meadows Racetrack yourself?            A. Yes.

Q. And what happened at Bay Meadows?

A. He stayed there from approximately 1 o'clock till 5—about 5:20.

Q. Did you see the defendant Ong?

A. Yes, the defendant Ong joined defendant Rocky at the racetrack.

Q. That is Rocky Yep you are referring to?

A. Yes. [74]



(Testimony of Bruce E. Hipkins.)

Q. What time did either of them leave, or did you see them leave?

A. I saw the defendant Yep leave there about 5:20 p.m.

Q. Was Ong with him at that time?

A. No, Ong was not with him at that time.

Q. Where did Yep go, if you know?

A. He went from there to 83 Winfield.

Q. Is that Mr. Ong's residence?

A. Yes, sir.

Q. Mr. Yep went to 83 Winfield?

A. Mr. Yep went to 83 Winfield.

Q. Go ahead.

A. And stayed there for a few minutes. Then he went to Chinatown area and went to this Mah Jong place at 31 Spofford Alley.

Q. Did you see him enter the Mah Jong place?

A. No, I saw him park his car in that vicinity and he was out of sight. I saw him coming out of that place.

Q. You saw him coming out of it?

A. Yes.

Q. And where did you follow him, if at all?

A. I followed from there to 225 Chestnut Street.

Q. Mr. Wu's? A. Yes.

Q. And what did you observe? [75]

A. I just observed him go to the address.

Q. Did you see him leave?

A. Yes, he left in the company of Agent Wu and went to a restaurant over on Green Street.

Q. All right.



(Testimony of Bruce E. Hipkins.)

A. Then he returned with Agent Wu to 225 Chestnut Street, and from there he went back to the Mah Jong place at 31 Spofford Alley.

Q. All right. Did you see him enter the Mah Jong place? Did you see him leave from it?

A. No, I didn't see him enter. I saw him come from it. He came from the Mah Jong place at approximately 9:15 p.m. in the company of Johnny Ong.

Q. I see.

A. They walked to Clay Street and stood by a 1955 Cadillac, black top yellow bottom, license No. 1L-23456, which was later identified as belonging to Johnny Ong.

Q. And did your surveillance end at that time?

A. It ended after the two of them walked down to the defendant Yep's Mercury.

Q. Directing your attention to February 22, 1956, Mr. Hipkins, did you have occasion to arrest the defendant Johnny Ong? A. Yes, I did.

Q. And did you arrest him alone or in the presence of [76] another agent?

A. Agent Wolski and myself.

Q. Agent Wolski is present in court; is that correct? A. Yes, he is.

Q. Would you kindly tell us where and when you arrested the defendant and what took place?

A. We arrested the defendant Johnny Ong in front of his home at approximately 4:30 a.m. on the 22nd of February.

Q. Was he walking?

(Testimony of Bruce E. Hipkins.)

A. He had just drove up in his 1955 Cadillac.

Q. I see.

A. And after the arrest while we were searching the place for narcotic contraband, during the course of the search we interrogated Johnny Ong.

Q. What did you say to him and what did he say to you? And this is in the presence of Mr. Wolski?

A. Yes, it is.

Q. All right, go on. Would you kindly repeat the conversation?

A. We accused him——

Mr. Riordan: May it please the Court, at this time I don't know if my procedure is correct, but may I interject a question, counsel?

Q. Did you have a search warrant at this time?

A. No, no search warrant. [77]

Mr. Constine: I might ask this to clear that up, Mr. Riordan.

Q. Did you have a complaint and warrant of arrest? Had a complaint been filed before the Commissioner in this case, or do you know that?

A. I am not sure.

Q. Did you tell him he was under arrest?

A. Yes.

Q. (By Mr. Riordan): You didn't have a warrant for his arrest; is that correct?

A. I don't know whether we did or not at that time.

Mr. Riordan: In view of those answers, your Honor, I will move at this time that no testimony be allowed in relation to any search or any conversations had between this witness and Mr. Ong.

(Testimony of Bruce E. Hipkins.)

Q. (By Mr. Constine): I might ask this question: Did you place the defendant Ong under arrest? Did you arrest him? A. Yes, we did.

Q. And what did you say to him at that time? How did you arrest him? What did you say to him?

A. We identified ourselves and said he was under arrest and had been implicated in the narcotic transactions with the defendant Rocky Yep.

Q. And was this the same morning or the evening that Mr. Yep was arrested? [78]

A. This was all on the same night extending into the next day. Rocky was arrested on the 21st late and this was 12:30 a.m. on the 22nd.

Q. This was Washington's Birthday; is that correct? This was February 22nd, then?

A. Yes.

Mr. Constine: That is why the Commission was not in session.

Q. Did you book him after your arrest at the County Jail? A. Yes, we did.

Q. Was he brought before the Commission on the 23rd when the Commission was in session, or do you know that of your own knowledge?

A. I don't know that.

Mr. Constine: Well, may it be admitted subject to objection and we will let the other agents link that up, your Honor?

Mr. Riordan: I will retain my objection, your Honor. I believe at the present time the evidence is sufficient that this man was under constant surveillance; that if they were to make an arrest they

(Testimony of Bruce E. Hipkins.)

had plenty of time in which to get the proper warrants.

The Court: I will allow it to remain subject to your motion to strike and over your objection.

Mr. Constine: Your Honor, we are not attempting to [79] introduce any property that was seized.

The Court: There is nothing before the Court. The Court has ruled. Proceed.

Q. (By Mr. Constine): Will you kindly repeat the conversation? Tell us what was said.

A. At that time I accused the defendant Ong of delivering a quantity of narcotics to Rocky on February 1st and it was my opinion that the night——

Q. Wait; is this what you were telling him?

A. Yes; it was my opinion that he had concealed the narcotics in the diaper of the child due to the fact that yellow stains were found on the container.

Q. This was what you had advised Mr. Ong?

A. Yes, and at this time——

Q. Go ahead.

A. At this time his wife came in and said that “I told you you would get into trouble”——

Mr. Riordan: I am going to object again, your Honor. May my objection go to all of this testimony as being incompetent, irrelevant and immaterial again and bringing in hearsay, and the conspiracy and the overt acts in relation to any conspiracy have not been established.

The Court: The objection will be overruled. He



(Testimony of Bruce E. Hipkins.)

is entitled to what occurred at that time and place, what was said, if anything. [80]

Q. (By Mr. Constine): You accused him of engaging in this narcotic transaction; is that correct? A. Yes.

Q. And the wife said to the defendant Ong in Ong's presence, "I told you you would get in trouble"?

A. "I told you you would get into trouble running around with Rocky."

Q. And what if anything did Mr. Ong say in reply to your accusation?

A. He said nothing at that time.

Q. Did he make any statement at all?

A. Nothing. He said nothing.

Q. All right. Did you have any conversation concerning his business or occupation?

A. Yes; I asked him what his occupation was and he stated that he had been unemployed for the past year. I asked him how he could explain buying the house, paying cash for the Cadillac and everything, and not working. He stated his income was derived from gambling.

Q. Did he state where he had worked in the past, do you recall?

A. I don't remember anything on those subjects.

Q. Did you examine the house? Did you search the house? A. Yes, I did.

Q. Did you find any phone in the premises?

A. No, I did not.



(Testimony of Bruce E. Hipkins.)

Q. Did you look for one? A. Yes.

Mr. Constine: I have no further questions.

Cross Examination

Q. (By Mr. Ringole): One question: Did you have a warrant to search that house?

A. No, sir.

Q. (By Mr. Constine): Did you find anything?

A. No, no contraband.

Q. (By Mr. Ringole): You had no warrant?

A. No, sir.

Q. You know, don't you——

Mr. Constine: I will object to Mr. Ringole arguing with the witness. If he wishes to ask a question he may ask the question.

Mr. Ringole: He knows the question I was going to ask him.

Mr. Constine: Well, ask any question you like, Mr. Ringole.

Mr. Ringole: That is all.

The Court: Proceed, counsel.

Cross Examination

Q. (By Mr. Riordan): You testified, Mr. Hipkins, that you saw Mr. Ong around 3:35 p.m. on February 1, 1956; is that correct? [82]

A. 3:55?

Q. 3:55. A. Yes, sir.

Q. And you saw him driving in his car; is that correct? A. Yes, sir.

Q. A 1951 Cadillac; is that correct?

A. Yes, sir.

(Testimony of Bruce E. Hipkins.)

Q. And was anyone else with Mr. Ong at that time in the automobile?

A. When he drove up, no.

Q. Yes. Now at this time you testified that Mr. Yep—Rocky Yep—got in the car with Mr. Ong and they drove around; is that correct?

A. Yes, sir.

Q. And how many blocks did they drive around?

A. I didn't count them; they were driving slowly for a period of say five minutes.

Q. Was there anyone else in the automobile at that time?      A. Just the two of them.

Q. Just the two of them. Now you testified that later on that evening at approximately 10 p.m. Ong drove up and parked his car and that he walked up carrying a child; is that correct?      A. Yes.

Q. To 1003 Jackson? You stated that Ong and Yep went into 1003 Jackson Street; is that correct?

A. Yes.

Q. And Mr. Yep came out a minute or two thereafter; is that right?      A. Yes, sir.

Q. Then Mr. Yep drove to 1003 Jackson Street; is that correct?

A. No, he drove to 225 Chestnut.

Q. I mean Mr. Wu's apartment. And then Mr. Yep came back to 1003 Jackson Street; is that correct?      A. Yes.

Q. And at that time did Mr. Ong get into Mr. Yep's automobile?      A. Yes.

Q. And who was with Mr. Ong, if anyone, when he got into the automobile?      A. No one.

(Testimony of Bruce E. Hipkins.)

Q. Was the child still with him?

A. No, not at this time.

Q. Was there just Mr. Yep and Mr. Ong in the automobile at that time? A. Yes.

Q. About what time was that, do you recall?

A. Approximately 10:30.

Q. Approximately 10:30. Following this ride Mr. Yep came [84] back to 1003 Jackson and Mr. Ong got out; is that correct? A. Correct.

Q. Now as they were riding around did you follow them? A. Yes.

Q. And can you recall at this time what streets they rode on in San Francisco?

A. No, I can't.

Q. Before Mr. Yep came back at 10:30 where were you located, or when he came back at 10:30 where were you sitting or watching the activities in and around 1003 Jackson?

A. On Jackson Street in the — parked in an automobile.

Q. And 1003 Jackson Street is located at Mason and Jackson in San Francisco; isn't that correct?

A. Right.

Q. And you were parked on Mason; or rather on Jackson? A. Right.

Q. Were you parked between Mason and Taylor on Jackson or between Mason and Powell on Jackson? A. Between Mason and Powell.

Q. Between Mason and Powell. So that you were down the hill from 1003 Jackson; is that right?

A. Right.

(Testimony of Bruce E. Hipkins.)

Q. And were you on the other side of Mason Street?

A. Yes, sir. On the other side of Mason?

Q. You testified you were parked on Jackson between Powell [85] and Mason, right?

A. Right.

Q. All right. And you were parked, I assume, on either the right hand side or left hand side looking towards Mason on Jackson?

A. Yes, we were parked on the north side of Jackson.

Q. On the north side. So that from where you were parked you were looking towards Mason and you were on the right hand side; is that right?

A. Right.

Q. And approximately how many car lengths back of Mason Street were you parked on Jackson?

A. Two or three.

Q. Two or three. Were there any cars parked in front of you on the same side of the street?

A. Yes, there were.

Q. Are there parking meters there on Jackson in that vicinity, if you can recall?

A. Not to my knowledge.

Q. Did I ask you if there were cars parked in front of you?      A. Yes, you did.

Q. Two or three cars parked in front of you. And from where you were seated in your automobile could you observe the entrance at 1003 Jackson Street?

A. We could observe the doorway, yes. [86]



(Testimony of Bruce E. Hipkins.)

Q. You could observe the doorway. Could you observe the door itself?

A. No, just the archway.

Q. Was someone else sitting in the automobile with you?           A. Yes.

Q. Let me ask you this question: After Mr. Yep drove up, was Mr. Ong waiting for him in front of 1003 Jackson Street or did Mr. Yep drive up and park?

Mr. Constine: May I ask this question: What time are you referring to?

Mr. Riordan: This is the 10:30 time.

A. We followed Yep from 225 Chestnut Street.

Q. (By Mr. Riordan): Yes.

A. And we were at a slight distance from him, we didn't remain right close. By the time we got close—we had pulled into a parking spot, and by that time, when we pulled into the parking spot and saw the car parked over on the corner the same where it was.

Q. Now you are referring to Rocky Yep's car; is that correct?           A. Yes.

Mr. Constine: Mr. Yep's car or Mr. Ong's car?

A. Mr. Yep's car. And then it——

Q. (By Mr. Riordan): Was his car parked next to the curb at this time? [87]

A. He was parked next to the curb at the time I first observed him.

Q. And was it on the north curb or on the south curb?           A. On the south curb.



(Testimony of Bruce E. Hipkins.)

Q. So it was on the curb opposite to the curb you were parked at?

A. Correct. And when I first observed him—I saw the car first and then I saw the two of them getting into the car.

Q. You didn't see Mr. Yep get out of the car then, did you?      A. No, no.

Q. Did you get a good look at Mr. Ong at that time so that you identified him as Mr. Ong getting into the automobile?

A. Good enough to identify him, yes.

Q. How many times previously had you seen Mr. Ong previous to this meeting?

A. Twice before.

Q. Twice. Now as I understand it, the two of them got into Mr. Yep's car and drove off; is that correct?      A. Correct.

Q. Did you follow them as they drove off?

A. Yes, sir.

Q. For approximately how long a time were they driving?

A. Five or ten minutes at the most.

Q. And did you keep them under observance for this full five or ten minutes? [88]

A. Not close surveillance, no.

Q. At any time did you look into this automobile while it was driving around so that you can say at this time there were only these two individuals in that automobile?      A. No.

Q. Did you see anyone else get into that automobile?      A. No, I did not.

(Testimony of Bruce E. Hipkins.)

Q. Did you see three people in that automobile?

A. No, sir.

Q. Were you close enough at any time if three people were sitting in that automobile you would have seen them?

A. Not necessarily.

Q. Not necessarily. Who was driving the automobile at this time?

A. The defendant Yep.

Q. And where was Mr. Ong sitting?

A. In the front seat.

Q. In the front seat; in what we commonly call the passenger seat there?

A. Yes.

Q. The front passenger seat. Was the child with Mr. Ong at that time?

A. No, not to my knowledge; not unless it was in the car ahead of time.

Q. Now they drove back to 1003 Jackson; is that correct? [89]

A. Yes.

Q. And Mr. Ong got out of the automobile; is that right?

A. Yes.

Q. Now at this time did you have a close surveillance of the activities in and about that car?

A. No, we were—all I could actually see at that time was one of them got out of the car and the defendant Rocky's Mercury drove off.

Q. I see.

A. It was far enough back I couldn't see definitely.

Q. And you only saw one person get out of the car, right?

A. Right.

Q. Now your testimony as to February 7, 1956.

(Testimony of Bruce E. Hipkins.)

You stated that you followed Mr. Yep to Bay Meadows; isn't that correct?      A. Yes, sir.

Q. And he apparently arrived there around 1 p.m. and he left approximately 5:20 p.m.; is that correct?      A. Correct.

Q. And you stated you saw Mr. Ong and Mr. Yep together; is that correct?      A. Yes, sir.

Q. And approximately what time did you see Mr. Ong and Mr. Yep together at the track?

A. It was 2 o'clock or later before I saw the defendant Ong with Yep in the grandstand. [90]

Mr. Riordan: I have nothing further, your Honor.

Mr. Constine: That is all.

Mr. Prziborowski, please.

### ELDON R. PRZIBOROWSKI

called as a witness on behalf of the Government;  
sworn.

The Court: Your full name?

A. Eldon R. Prziborowski, P-r-z-i-b-o-r-o-w-s-k-i.

Q. Your business or occupation?

A. I am a narcotic agent employed with the United States Bureau of Narcotics.

Q. How long have you been so engaged?

A. Since December 17, 1951.

The Court: Take the witness.

### Direct Examination

Q. (By Mr. Constine): Mr. Prziborowski, you

(Testimony of Eldon R. Prziborowski.)

are assigned to the San Francisco office, is that correct?      A. Yes, sir.

Q. And directing your attention to February 1st of this year, 1956, did you have an occasion to see the defendant known as Rocky Yep who sits at my right?      A. Yes, I did.

Q. When did you first see him on that day?

A. I saw him at about approximately 2 o'clock—about five minutes after 2:00 in the afternoon driving his Mercury [91] automobile to the vicinity of 225 Chestnut Street.

Q. I see. And what address was that?

A. I just said 225 Chestnut Street.

Q. And do you know where Mr. Wu was residing at that time or had an apartment?

A. Yes, I do.

Q. And where was that?

A. At 225 Chestnut Street.

Q. And what did you see Mr. Yep do, if anything?

A. I saw him drive by and go up that dead end street, and then I watched the defendant Yep drive away at about 2:25 p.m. in the afternoon.

Q. You were not in a position to see him enter the building?      A. No, I was not.

Q. Did you follow him as he drove away?

A. Yes, I did.

Q. And where did he go?

A. He drove to 83 Winfield Street in San Francisco.

Q. Whose residence is that?



(Testimony of Eldon R. Prziborowski.)

A. As far as I know, it is the residence of the defendant Johnny Ong.

Q. And did you happen to see the defendant Ong on that day of February 1st?

A. Yes, I did. [92]

Q. Where was the first place that you saw him?

A. I saw him on Mason Street drive a Cadillac automobile, I believe it was a 1951 model, license No. CKC 040 at about five minutes to 4:00 in the afternoon. He drove his Cadillac automobile and parked on Mason Street right alongside of where the defendant Yep was seated in his automobile. The defendant Yep got out of his automobile and entered the Cadillac driven by the defendant Johnny Ong. They drove around—around a few blocks and the defendant Yep got out of the automobile, and I followed the defendant Johnny Ong to where he parked the Cadillac automobile on Washington Street between Grant and Waverly Place.

Q. Did you have an occasion to see Yep and Ong again on the evening of February 1st, and if you did, where did you see them and what time?

A. Yes; I saw the defendant Ong driving the same Cadillac automobile west on Jackson Street and turn north out of Powell Street, turn around the corner, and then entering this alley or street called John Street and park, oh, about a fourth of the way up the street right alongside of where the defendant Yep was already seated in his Mercury automobile.

I saw the defendant Yep get out of his Mercury



(Testimony of Eldon R. Prziborowski.)

automobile and enter the automobile driven by the defendant Johnny Ong.

Q. About what time of night was this?

A. That was between 7:00 and 7:30; approximately 7:15 or 7:20 p.m. [93]

Q. And then what happened after you saw Mr. Yep enter Mr. Ong's automobile?

A. They drove around the block and the defendant Yep got out of the Cadillac automobile driven by the defendant Johnny Ong and entered his own automobile and drove off.

Q. Who did you see next, Mr. Yep or Mr. Ong?

A. I next saw the defendant Yep driving away from the vicinity of Compton's Restaurant on Van Ness Street.

Q. Did you follow him?

A. I followed the defendant Yep to the vicinity of Jackson and Mason Street where he parked his automobile on Jackson Street on the south side of the street.

Q. And what happened there, do you know?

A. The defendant Yep got out of his automobile and walked west on Jackson Street where he was—where some other Chinese people appeared on the street, and he stayed in that vicinity for a short period of time. Then he walked across the street, across Mason Street with a Chinese I couldn't recognize. It was a Chinese similar to the defendant Ong, but I couldn't say it was Ong at that time.

Q. All right.

A. Then I went back to the automobile and I

(Testimony of Eldon R. Prziborowski.)

was seated in with Agent Hipkins. Then I next noticed the defendant Johnny Ong's automobile driving away—the Cadillac. [94]

Q. You say you noticed his automobile. Did you see the license number?

A. Yes; I was down the street, and I noticed it was parked on Mason Street near Jackson Street. Then seated from where I was in the car I couldn't see who was driving it, but I saw the automobile leave the area.

Q. And that was the same license you had seen Mr. Ong driving previously?

A. Yes; that was approximately 9:30 p.m.

Q. Was that approximately 9:30 that you saw Mr. Ong leave?

A. No; let's see. I saw the defendant Yep arrive at the area at approximately 10 minutes to 9:00. At approximately 9:15 I saw the Cadillac automobile leaving.

Q. What did Mr. Yep do? Did you keep him under surveillance?

A. Yes, I kept the defendant Yep under surveillance at all times.

Q. What did he do?

A. He waited—he waited in his automobile; he went out to the corner and stood on the street. About every 15 minutes he would get out of his automobile and then he would return to his automobile, which was parked right in front of the common entranceway of 1003, 1005, 1007 and 1009

(Testimony of Eldon R. Prziborowski.)

Jackson Street. At approximately 10 p.m. I saw the Cadillac return to the area and——

Q. Is this the same Cadillac you testified about previously? [95]

A. Yes, sir. And the defendant Ong got out of the Cadillac automobile carrying a small child in his arms, and he walked over to the entranceway of 1003-5-7-9 Jackson Street, and as he approached there the defendant Yep jumped out of his automobile and walked into the common entranceway side by side.

Q. What happened next?

A. In less than a minute's time, just a very short period of time, the defendant Yep came from this common entranceway and entered his automobile and drove off, and I followed him back to the apartment house at 225 Chestnut Street.

Q. That is where Mr. Wu was; is that correct?

A. Yes, sir.

Q. Did you see Mr. Yep leave 225 Chestnut?

A. Yes; at approximately 10:20 p.m. I followed with Agent Hipkins in our automobile and we followed the defendant Yep's automobile rather loosely, and by the time we parked on Jackson Street between Mason and Powell the defendant Yep had already gotten out of his automobile and I saw the defendant Yep with the defendant Ong return and get into the defendant Yep's automobile—into the Mercury.

Q. And where did they go, if anywhere?

A. They went west on Jackson Street and rode

(Testimony of Eldon R. Prziborowski.)

around either one or two blocks and then the Mercury automobile returned to the vicinity of Jackson and Mason Street. [96]

Q. Did anyone get out?

A. One of the occupants got out. We were, I believe, approximately a block away at the time that one of the people got out of the automobile, and the defendant—I mean the Mercury automobile drive off.

Mr. Constine: I have no further questions of this witness.

Mr. Ringole: No further questions.

#### Cross Examination

Q. (By Mr. Riordan): You stated approximately five minutes before you saw Mr. Yep get out of his automobile and enter Mr. Ong's automobile; is that correct? A. Yes.

Q. Did you get a good look at the inside of Mr. Ong's car?

A. What do you mean, a good look at the inside?

Q. Well, could you see clearly inside Mr. Ong's car?

A. Well, I could see clearly that there was only one person in the automobile at the time that Yep got into the automobile.

Q. Did you see any child with Mr. Ong at that time? A. No, I didn't.

Q. Were you sitting with Agent Hipkins, I believe his name is, at approximately 10:30 when



(Testimony of Eldon R. Prziborowski.)

you saw Mr. Yep drive back to 1003 Jackson Street?      A. Yes, sir.

Q. Did you clearly see Mr. Ong at that time get into the [97] automobile of Mr. Yep?

A. I saw a—I saw a person that met all the physical characteristics of the defendant Johnny Ong.

Q. Had you ever seen Johnny Ong before?

A. Yes, I saw him earlier in the daytime.

Q. And this was the time when he was driving around in his automobile; is that correct?

A. Yes, sir.

Mr. Riordan: Nothing further, Your Honor.

Mr. Constine: Mr. Stenhouse, please.

**JOHN A. STENHOUSE**

called as a witness on behalf of the Government; sworn.

The Court: State your full name.

A. John A. Stenhouse, S-t-e-n-h-o-u-s-e.

Q. Your business or occupation?

A. Treasury agent of the United States Bureau of Narcotics.

Q. How long have you been so engaged?

A. For the past two years.

Q. What did you do before that?

A. One year before that I was deputy sheriff in Seattle, Washington; three years before that I was an acting inspector in the Long Beach Police Department, Long Beach, California.

The Court: Take the witness. [98]



(Testimony of John A. Stenhouse.)

Direct Examination

Q. (By Mr. Constine): Mr. Stenhouse, you are assigned to the San Francisco field office of the Bureau of Narcotics; is that correct?

A. Yes, sir.

Q. Directing your attention to February 1st, 1956, did you have an occasion to see the defendant Rocky Yep who sits at my right? A. Yes, sir.

Q. And where was it on that day and when did you first see him?

A. At approximately 2:05 p.m. I observed the defendant Yep to approach 225 Chestnut Street.

Q. When you say "approach," what did you actually see?

A. I saw him driving his 1952 Mercury vehicle up the hill, which is a dead end street at that location, and park same.

Q. Did you see him enter 225 Chestnut Street?

A. No, sir, I couldn't.

Q. Will you kindly describe the vehicle you were driving in, please.

A. The vehicle—I was not driving a vehicle.

Q. Well, the vehicle that you were sitting in, I should say.

A. I was seated in a 1952 Chevrolet coupe.

Q. Was there a radio in the car? [99]

A. Yes, sir, there was.

Q. Would you kindly describe the radio and tell us what it consisted of?

A. There is a—it was equipped with a two-way

(Testimony of John A. Stenhouse.)

radio; I could send and receive messages with other units of the same equipment.

Q. Was there a unit at 225 Chestnut Street?

A. Yes, sir, there was.

Q. And that is in Mr. Wu's apartment?

A. Yes, sir.

Q. At approximately 2 p.m. did you hear Mr. Wu's voice over the loudspeaking system in your car?

A. Yes, sir.

Q. Could you recognize it as Mr. Wu's voice?

A. Yes, sir.

Q. Could you hear him address anyone?

A. I heard him address a person named Rocky.

Q. Was that an instantaneous reproduction of the voice, or were you listening to a recording?

A. No, sir, that was instantaneous.

Q. In other words, as Mr. Wu talked, you heard him talk?

A. Yes, sir.

Mr. Riordan: If it please the Court, again on behalf of my client I will now object to any and all testimony that has been received already and will be received along this [100] line on the basis of fact that it is incompetent, irrelevant and immaterial as to the defendant Ong, that it is hearsay and is being improperly allowed in against Mr. Ong in view of the fact that no conspiracy has been developed.

Mr. Ringole: I make the same objection.

Mr. Constine: Those objections have been made, Your Honor, and I understand they are under submission; and we are connecting it up now, we are

(Testimony of John A. Stenhouse.)

proving the conspiracy by their acts and actions. That is what we are trying to do.

The Court: I will allow that in subject to your motion to strike and over your objection.

Mr. Riordan: I am renewing this objection with every witness. If the Court states I do not have to, that it would be considered as running to all the Government evidence——

Mr. Contine: We have already said we understand that he is objecting to all the testimony.

Mr. Riordan: To all the testimony. I see.

Mr. Ringole: That goes for my client, too.

Mr. Constine: We take a different position there. This man was——

Mr. Ringole: Then I will make the objection.

Q. (By Mr. Constine): Mr. Stenhouse, would you kindly repeat the conversation to the best of your knowledge, that you heard over your radio receiver?

A. I recall this person addressed as Rocky to state to [101] Agent Wu that he had three connections already lined up on ships and that he could supply at a later time any quantity of stuff that Agent Wu might wish to have. He further stated that he had another connection within the city that was a respectable family man.

Q. Did he describe him any more than that?

A. No, sir, not at that time.

Q. All right; go ahead.

A. That is just about all the conversation I can recall.

(Testimony of John A. Stenhouse.)

Q. Was it all in English, or was it Chinese?

A. Part of it was in—on that occasion it was all in English.

Q. Did Mr. Yep say where he was going, or did you hear any further discussion?

A. Yes. The subject they were speaking about was Agent Wu being in the market for narcotics, and after a short stay the person identified as Rocky stated that he was going to pick up now.

Mr. Riordan: May I have that last answer?

(Record read.)

Q. (By Mr. Constine): Mr. Stenhouse, you have been a narcotic agent for how long?

A. Two years.

Q. And what does the term in the parlance of the narcotic traffic "pickup" mean? [102]

A. It means that the person is going to obtain narcotics.

Q. Did you see Mr. Yep after that?

A. Yes, sir.

Q. And where did you see him?

A. He left 225 Chestnut in the previously described Mercury vehicle and drove directly to 83 Winfield Street.

Q. And whose residence was that?

A. I later learned that that was the residence of the defendant Johnny Ong.

Q. And did you see the defendant Ong on this day in question, February 1st?

A. Later I did, yes, sir.

Q. And where was that?



(Testimony of John A. Stenhouse.)

A. That was near the intersection of Mason and Jackson Streets.

Q. About what time was that?

A. Approximately 3:55 p.m.

Q. Would you kindly tell me what you observed?

A. I observed the defendant Yep to be parked at approximately 1254 Mason Street in his Mercury vehicle. At 3:55 p.m. I observed this 1951 Cadillac with California license CKC 040 to drive alongside, being driven by a person I later identified as Johnny Ong, and defendant Yep entered that vehicle.

Q. What did they do? [103]

A. They drove around the block.

Q. Do you recall how many times, at this time?

A. No, I can only recall that they went around—actually it would be four blocks, but around four turns.

Q. I see. And what happened then, so far as you know?

A. The defendant Yep left the Cadillac and entered his Mercury vehicle and then drove back to 225 Chestnut Street.

Q. Did you see the defendant enter 225 Chestnut Street?

A. No, sir, I could not.

Q. Did you see him leave?

A. No, sir, I could not see him actually leave the doorway.

Q. Did you see him again any time on that day of February 1st?

A. Yes, sir.

Q. And when was that?



(Testimony of John A. Stenhouse.)

A. As he left 225 Chestnut Street for the second time he drove to the area of Francisco Street and Powell Street. He left his vehicle and attempted to enter the Mambo City tavern. He could not get in there, and then went to a grocery store located across the street from there. He disappeared from my view therein for a very few minutes.

Q. Did you see him again? A. Yes.

Q. Where did he go then the next time you saw him?

A. He then entered his vehicle and again returned to 225 [104] Chestnut Street.

Q. Directing your attention to 7 o'clock on the evening of February 1st, did you have occasion to see the defendant Yep or the defendant Ong?

A. I saw defendant Yep first.

Q. Where was that?

A. At approximately 7:10 p.m. the defendant Yep left his residence, 735 Washington Street, and drove to the vicinity of 32 John Street.

Q. What happened there?

A. He parked his vehicle there, and I had a conversation with other agents in another car.

Q. I see. What happened next? Did you see the defendant Ong?

A. I saw the defendant Ong's automobile.

Q. You couldn't identify the driver at that time?

A. Not at that time, sir.

Q. Did you see the license on the automobile?

A. Yes.

(Testimony of John A. Stenhouse.)

Q. Was that the same auto you saw the defendant Ong in previously? A. Yes, sir.

Q. What happened then?

A. I observed this 1951 Cadillac to go west out of John onto Mason Street. [105]

Q. Do you know whether Mr. Yep was in the car then?

A. No, sir, as the car approached Mason and Jackson Street—I don't recall, sir.

Q. Did you see the defendant Yep or Ong again on this evening after the meeting at 7 o'clock that you saw Mr. Yep? A. Yes, sir.

Q. And where was that?

A. I next saw the defendant Yep within Compton's Restaurant at Geary and Van Ness Street at about 8:10 p.m.

Q. And who was he with?

A. He was with Agent Wu.

Q. Were they both within your view?

A. Yes, sir.

Q. And what happened after you saw them in Compton's?

A. I observed them to have a conversation for about 15 minutes, and then defendant Yep left Agent Wu.

Q. Where did he go? A. I don't know.

Q. When did you see him again?

A. I saw him within a very short time thereafter in the vicinity of Jackson and Mason Street.

Q. And what happened on that occasion?

A. I was on foot surveillance and observed de-

(Testimony of John A. Stenhouse.)

defendant Yep to approach an unidentified female accompanied by a Chinese person that I identify as Johnny Ong in front of the common [106] doorway at 1003 Jackson Street.

Q. What did you see happen then?

A. I observed the defendant Ong to drive his 1951 Cadillac from that area and he disappeared from my view.

Q. What did the defendant Yep do?

A. The defendant Yep stayed within the area until about 10:10 p.m.

Q. When you say he stayed within the area, what did you see him do in that time?

A. Well, he occasionally was out of my view, except when he would stand on the southwest corner of the intersection of Jackson and Mason, and it appeared that he was walking back and forth.

Q. And then what happened?

A. At approximately 10:10 I observed defendant Ong to return in the 1951 Cadillac, and park it on the northwest corner of Jackson and Mason Streets. He crossed the street and together, without stopping, entered the common doorway residence——

Q. When you say together—together with whom?

A. Together with defendant Yep, who also approached him simultaneously, and together they entered the common doorway at 1003 Jackson Street.

Q. And how long did either stay in there and what was the next thing you saw?

A. I observed the defendant Yep to come out in .

(Testimony of John A. Stenhouse.)

approximately [107] I would say a minute; he entered his Mercury vehicle and drove directly to 225 Chestnut Street.

Q. And what did you do then?

A. I followed him to 225 Chestnut Street and discontinued surveillance of defendant Yep at that time.

Q. You didn't follow him when he left 225?

A. No, sir.

Q. Did you go up into Mr. Wu's apartment?

A. No, sir, I met with Agent Wu.

Q. Did you initial anything?

A. Yes, sir, I did.

Q. And what was that?

A. I initialled a container that Agent Wu produced.

Q. Do you know whether this is the container that you saw on that evening? This is February 1st, isn't it?

A. Yes, sir, that is the container.

Q. Are your initials on that?

A. Yes, sir, they are.

Q. Would you kindly replace it?

And what time was this now, approximately, on February 1st?

A. That I placed my initials thereon?

Q. Yes.

A. It was after the defendant Yep had left the residence of 225 Chestnut Street and I met with Agent Wu and other agents in [108] the headquarters office.

Q. Now, Mr. Stenhouse, directing your atten-



(Testimony of John A. Stenhouse.)

tion to the day February 6, 1956, did you have an occasion to see the defendant Yep or Ong, and if you did, where did you see them, and at what time?

A. Yes, sir; I saw both defendant Yep and defendant Ong together with another unidentified Chinese person that is employed at the Union Oil Service Station, at Geary and Polk Street. The three walked to the used car Cadillac Sales Company located at Polk and O'Farrell Streets. The three met with an unidentified salesman and were looking at, for over an hour, a 1955 Cadillac with license 1-L-23456. It is ivory with a dark top.

Mr. Riordan: What date was this?

A. February 6th, about 4:30 in the evening.

Q. (By Mr. Constine): Was that the completion of your surveillance on that day?

A. Yes, sir, as near as I can recall.

Q. Directing your attention to the next day, did you have an occasion to see either Yep or Ong, and if you did, where, at what time, and which one did you see first?

A. I observed defendant Yep on February 7th at about 11:15 a.m. to again approach 225 Chestnut Street.

Mr. Riordan: May I interrupt for a moment, Your Honor? It is my understanding I must be a little more specific; that [109] my objection as to the competency, relevancy and materiality also goes to the testimony of this witness in relation to his observance of my client and two other Chinese individuals going to the Cadillac automobile.



(Testimony of John A. Stenhouse.)

Mr. Constine: So far as the relevancy is concerned, Your Honor, the relevancy of this testimony is to identify the individual from whom Yep was obtaining his narcotics. He had described him to Mr. Wu as purchasing a new '55 Cadillac, or just about to, and this agent is testifying that he saw Mr. Yep and Mr. Ong on the day before at the Cadillac lot. And in subsequent testimony we intend to prove that he saw Mr. Ong actually driving this particular 1955 Cadillac. Its relevancy is for the purpose of identifying the individual Mr. Yep was talking about.

The Court: For that limited purpose I will allow it.

Mr. Riordan: Again, Your Honor, he is going right back to the problem of hearsay which always arises in this type of testimony.

Q. (By Mr. Constine): You saw Mr. Ong on February the 6th? A. Yes, sir.

Q. What happened on February the 7th, the next day?

A. At about 11:15 a.m. I observed the defendant Yep to again approach the residence at 225 Chestnut Street.

Q. Go on. What happened?

A. I heard a conversation over the radio. [110]

Q. Where were you?

A. I was still within the government vehicle in which I was driving.

Q. Did you hear Mr. Wu's voice?

A. Yes, sir.

(Testimony of John A. Stenhouse.)

Q. Did you hear the voice of the man you had heard previously?      A. Yes, sir.

Q. Did you hear him addressed by name?

A. Yes, sir.

Q. What name?

A. He again referred to the other individual as Rocky.

Q. All right. Now would you kindly, to the best of your recollection, repeat the conversation?

Mr. Constine: And I understand counsel has the same objection.

Mr. Riordan: Yes.

Mr. Ringole: And I will make the objection that it is incompetent, irrelevant and immaterial.

The Court: Let the record so show.

Mr. Riordan: May I get the date?

Mr. Constine: February 7th—at what time?  
11:15 a.m.

Mr. Ringole: The indictment indicates that this conspiracy was consummated on February 1st.

Mr. Constine: It does no such thing, Your Honor. Mr. [111] Ringole is stating something that is not so. The indictment states that a time and place unknown to the Grand Jury these defendants conspired. One of the overt acts set forth happens to be February 1st.

Mr. Ringole: Will you read the indictment? You will see that the sale was on the 1st of February and you will see that the overt acts were all on the 1st of February and those that you prove

(Testimony of John A. Stenhouse.)

directly were on the 1st of February with reference to the subject matter of this conspiracy.

Mr. Constine: I might state for the record, Your Honor, so that the record is clear, that in paragraph 1 of the conspiracy count of this indictment it states "that at a time and place to the Grand Jury unknown, the defendants Yep and Ong, alias Johnny Ong, and others to the Grand Jury unknown did knowingly and willfully conspire together."

I think that is sufficient for the purposes of this objection.

The Court: The objection will be overruled. Will you proceed.

Q. (By Mr. Constine): Would you kindly to the best of your recollection repeat the conversation that you heard? And this is the same manner that you had the previous one that you testified to on February 1st?

A. Yes, sir. The part of the conversation I recall——

Q. Was it all in English? [112]

A. No; this particular conversation was at times in Chinese and at times in English.

Q. Do you understand Chinese? A. No, sir.

Q. Then would you repeat what you understood?

A. I heard the person's voice of Rocky stating that his connection was considering purchasing a new Cadillac. I further heard Rocky to state that he would like to go back to the Orient, and he spoke

(Testimony of John A. Stenhouse.)

of the living conditions over there, the rate of exchange. And that's about all I can recall, sir.

Q. What happened after this conversation? Did you see Mr. Yep leave, or did you follow him?

A. Yes, sir; the defendant Yep left this place and proceeded directly to the San Mateo racetrack.

Q. And did you see Mr. Ong?

A. Yes, sir, I did.

Q. And where did you see Mr. Ong?

A. I saw him in the F section of the uppermost stands, and he was in company with defendant Yep.

Q. Did you see either one of them leave?

A. Yes, sir, I saw defendant Yep leave.

Q. Did you see Mr. Ong leave?

A. No, sir.

Q. Did you follow Mr. Yep? [113]

A. Yes, sir. He returned immediately to 83 Winfield Street and stayed there a very short time and continued on back into the Chinatown area.

Q. This is on February 7th, is it not?

A. Yes, sir.

Q. Did you end your surveillance at that time?

A. Shortly thereafter, yes, sir.

Q. Did you see Mr. Ong that night of February 7th, the day of Bay Meadows? A. I'm not sure.

Q. Now on February 8th, 1956, the next day, did you see either Mr. Yep or Mr. Ong, and if you did, where and at what time?

A. On February 8th I observed defendant Yep leave his residence and go directly to 83 Winfield Street where he met with defendant Ong. The two



(Testimony of John A. Stenhouse.)

entered the 1955 Cadillac and disappeared from my view.

Q. What license number was that?

A. That was 1-L-23456, as near as I can recall.

Q. Was that the same car and license you had seen on the lot—the men looking at on the lot?

A. Yes, sir, it was.

Q. And did you see them again that day?

A. I didn't see them until about 3:15 in the afternoon.

Q. What were they doing and where were they? Were they [114] driving?

A. The two were seated within the Cadillac.

Q. The same car?

A. Yes, sir; at the Union Oil Service Station at Polk and Geary Streets.

Q. Directing your attention to February 21, 1956 did you have an occasion to see the defendant Rocky Yep—I should say, did you have occasion to question the defendant Rocky Yep?

A. Not on the 21st, sir.

Q. On the 22nd? A. Yes, sir.

Q. That was Washington's Birthday?

A. Yes, sir.

Q. What time and where did you see him?

A. It was shortly after midnight of the 21st, which was the 22nd. He had already been arrested and brought to headquarters office. When I first saw him he was within the headquarters office. After other agents had completed their interrogation of him, I commenced an interrogation of him.



(Testimony of John A. Stenhouse.)

Q. Do you recall whether anyone was present besides yourself and Mr. Yep?

A. There were other agents coming and going from this office. [115]

Q. Would you kindly tell us to the best of your recollection in substance what you said to him and what he said to you?

A. I asked defendant Yep some of his personal history which was necessary for a routine report, such as his background, what type of work he did; and he stated he was unemployed for the last couple of years but that he was a merchant seaman. And I asked him about his junk business.

Q. Did he say how long he had been engaged in the——

A. Yes, he stated that he had been in the narcotic traffic for the past four years.

Q. (By Mr. Riordan): Is that what you meant by junk business?      A. Yes.

Q. (By Mr. Constine): What does the term “junk” mean?

A. “Junk” means anyone handling illicit narcotics, namely, heroin.

Q. Did you question him about his activities with Mr. Wu?

The Court: State what was said and done at that time and place.

A. I asked him if he was aware of all the sales he had made to federal undercover agents. He stated that he was. He was very cooperative. I asked him about some of his associates. He stated

(Testimony of John A. Stenhouse.)

in response to that question, he says, "You have me right." He says, "Can I take the rap alone without [116] involving anyone else?"

I said, "Well, how about Johnny Ong?"

He says, "Oh, he is a good family man." He says, "You got me; that's it."

Q. Was that the extent of your conversation?

A. That is all I can recall at this time.

Mr. Constine: I have no further questions.

The Court: We will take a recess.

(Recess.)

Mr. Constine: I have no further questions, Your Honor. I believe it is time for the cross examination.

Mr. Ringole: No questions, Your Honor.

### Cross Examination

Q. (By Mr. Riordan): May I have your name, please? A. John A. Stenhouse.

Q. Stenhouse, is that right? A. Yes, sir.

Q. Now, Mr. Stenhouse, you testified that on the 7th day of February 1956, you saw Mr. Ong and Mr. Yep meet at the racetrack; is that correct?

A. Yes, sir, that is true.

Q. You referred to it as the San Mateo racetrack. I think that is Bay Meadows; is that correct?

A. Sir, I really don't know. All I know is someone referred to it as the San Mateo racetrack. I am not familiar, but [117] it is in that area south of here.

(Testimony of John A. Stenhouse.)

Q. Do you recall, was it thoroughbreds racing that day?

A. It was a mixed race; there was harness horses as well as quarter horses, I believe.

Q. Quarter horses. And thoroughbreds were not racing, is that correct?      A. No, no.

Q. Do you recall approximately what time you saw Mr. Ong and Mr. Yep at the track?

A. I saw the defendant Yep actually to enter the track, but when I first noticed defendant Ong it must have been around 2 o'clock or so.

Q. Now, Mr. Yep left approximately at 4 o'clock; was that your testimony?

A. No, sir, I didn't testify to that.

Q. What time did he leave, can you tell me?

A. I believe he might have left around 5:10 or so; I can't—

Q. You saw Ong and Yep together at 2 o'clock; is that correct?      A. Yes, sir.

Q. Did you keep Mr. Yep under your surveillance from that time at 2 o'clock until he left around 5:10?

A. Yes. He was not under constant surveillance.

Q. Did you see Mr. Yep talk to other people down there besides Mr. Ong? [118]

A. Yes.

Mr. Riordan: I have nothing further.

Mr. Constine: Mr. Albee, please.

## DANIEL P. ALBEE

called as a witness on behalf of the Government;  
sworn.

The Court: Your full name, please?

A. Daniel P. Albee, A-l-b-e-e.

Q. And your business or occupation?

A. I am a Cadillac salesman, Your Honor, at the Cadillac Motor Car Division on Van Ness Avenue.

Q. Here in this city?

A. In the city, yes, sir.

## Direct Examination

Q. (By Mr. Constine): Have you ever seen the defendant Johnny Ong before, Mr. Albee?

A. Yes, sir, I have.

Q. And did you have an occasion to see him on February 6th of this year? A. Yes, sir.

Q. And would you kindly tell us whether he purchased an automobile from your Cadillac Motor Division? A. Yes, sir, he did.

Q. And when did he first see you about the car on February 6th? [119]

A. It was some time in the morning on February 6th.

Q. And was he alone or was he with anyone else? A. No, he was with another party.

Q. Do you know that person's name?

A. Yes, sir, I do.

Q. What is his name?

A. A man by the name of Chan, William Chan.

Q. And do you know where he works or what his business or occupation is?



(Testimony of Daniel P. Albee.)

A. Yes, he works at the Union Oil Station at the corner of Polk and Geary.

Q. And was Mr. Ong negotiating for an automobile?  
A. Yes.

Q. Do you recall what kind of a car it was and what year car it was?

A. Yes, it was a 1955 Cadillac.

Q. Do you recall whether it was two-tone or one-tone?  
A. No, it was a two-tone car.

Q. Did he actually purchase the car?

A. Not on February 6th, sir.

Q. He came back?

A. He came back the next day and completed the transaction. I might say that they actually purchased the car as far as I was concerned on the morning of February 6th, but there was no money taken at that time. We don't consider it a legal [120] transaction, so to speak, until the money is up.

Q. And when was that? On the 7th?

A. That occurred on the 7th, yes, sir, the next day.

Q. Do you recall when on the 7th?

A. Yes, some time after lunch.

Q. Did you see Mr. Ong at the showroom where the car was in the afternoon of the 6th?

A. No, sir, I didn't.

Q. Do you know whether he was there?

A. No, I don't.

Q. Where was your particular office?

A. Well, my particular field of activity is gen-



(Testimony of Daniel P. Albee.)

erally in our new car showroom which is up on Van Ness Avenue.

Q. So you didn't show the automobile to Mr. Ong?  
A. No, I didn't.

Q. Did he consummate the purchase on the afternoon of February 7th?  
A. Yes, they did.

Q. How much was the car sold for?

A. The car was sold for 3895 plus the tax and license involved.

Q. And in whose name was the car purchased?

A. The car was purchased by Johnny Ong and registered in the name of Jennie Leong or Jeong.

Q. And who is that? [121]

A. I understood it to be Mr. Ong's wife.

Q. His name was not on the car?

A. His name was not on the registration, no, sir.

Q. But he was the purchaser?

A. But he was the purchaser.

Q. And do you know what kind of a car he himself turned in on this, if any—on this transaction?

A. Yes, there was as a matter of fact, two cars turned in, I might say, one by Mr. Ong and one by Mr. Chan.

Q. On Mr. Ong's purchase?

A. On this transaction, yes, sir.

Q. Was this negotiated by check or by cash?

A. Two cars were turned in, and it is usually our policy to take one or both cars out and try to wholesale them before we complete our transaction.

Q. What actual money changed hands?

(Testimony of Daniel P. Albee.)

A. Well, there was a total of just over \$1600 in cash.

Q. Paid by whom? A. Paid by Mr. Ong.

Q. For the purchase of the '55 Cadillac?

A. For the purchase of the '55 Cadillac, yes, sir.

Mr. Constine: I have no further questions.

Mr. Ringole: No questions.

### Cross Examination

Q. (By Mr. Riordan): Mr. Albee, you stated that the car was [122] finally—the sale was finally finished on the afternoon of February 7th; is that correct? A. That is correct, yes, sir.

Q. And you stated it was after lunch. Could you tell us approximately what time that was?

A. I would say—I would say close to 4 o'clock.

Q. Close to 4 o'clock?

A. Before it was finally consummated. I was occupied—I might say this: I was occupied most of the day, however, with the transaction. That had to do with the two cars that were traded. I took one out and had to get some bids on it to get the best price I could on it.

Q. You state that this particular transaction took most of the day of February 7th; is that right?

A. Yes, sir, it did.

Q. Was Mr. Ong with you most of this day?

A. No, he was not.

Q. While you were conducting this transaction?

A. No, he didn't—to the best of my recollection

(Testimony of Daniel P. Albee.)

he didn't get into the transaction on the day of the 7th until some time after lunch.

Q. At around 4 o'clock you gave the automobile to Mr. Ong; is that correct? A. That's right.

Q. And what time were the papers finally signed? Let me ask [123] this preliminarily: Were some papers signed by Mr. Ong in order to complete this transaction? A. Oh, yes.

Q. And do you know what time they were signed, please?

A. Well, the finalizing of the deal was close to midafternoon, I would say, on the 7th.

Q. Thank you. Now you stated that Mr. Ong came in on the 7th of February shortly after lunch; is that correct?

A. Well, I wouldn't state the exact time, but I am quite sure it was after lunch, yes, sir.

Q. Was it fairly close to 1 o'clock or 1:30?

A. Perhaps a little later than that.

Q. Would you say 2 o'clock?

A. Maybe 2 o'clock would be closer to it.

Q. Then the transaction was finally finished around 4 o'clock; is that correct? A. Yes.

Q. Was Mr. Ong with you most of this time or did you see him in between these hours?

A. As I say, of course it must have been around 2 or 2:30; and then it took us about an hour to complete the transaction, I would say.

The Court: Is that all?

Mr. Riordan: No, I have more, Your Honor, but I don't want to proceed without counsel. [124]

(Testimony of Daniel P. Albee.)

Mr. Constine: That is all right.

The Court: Oh, we can get along without him. Proceed.

Mr. Riordan: Mr. Albee, I will hand you—just a moment; let me have it identified. I will ask that this document be marked for identification, please.

The Court: Let it be admitted and marked for identification.

The Clerk: Defendant's Exhibit A marked for identification.

(Whereupon bill of sale referred to above was marked Defendant's Exhibit A for identification.)

Mr. Riordan: Mr. Albee, I hand you what has been marked as Defendant's Exhibit A for identification and ask you if you recognize that particular document. A. Yes, I do.

Q. And just what is it, please?

A. Well, this is our itemized bill of sale that we render in every case on a new or used car transaction.

Q. Does it show the name of the purchaser on that particular slip?

A. It doesn't show the name of the purchaser, but it does show the name of the person to whom it was registered.

Q. And to whose name is it registered?

A. Dennis Young.

Q. And the address here, please? [125]

A. 83 Winfield Street, San Francisco.



(Testimony of Daniel P. Albee.)

Q. And the date February 7th, 1956 is on that document? A. Yes, sir.

Q. Is that correct?

A. That is correct, sir.

Q. Does that document there properly reflect the transaction in which a 1955 automobile was sold to Mr. Ong on February 7, 1956?

A. That is correct.

Q. It shows that the price of the used car together with the sales tax totals \$4031.32; is that correct?

A. With the sales tax, yes, sir, but there is a license fee to add to this figure to bring it to the total.

Q. Right under that it shows that a Cadillac coupe DeDille year '51 and then behind that the number \$1400. What does that represent, please?

A. That represents one of the cars that was traded in. That was the allowance that we gave to the car.

Q. So that from the total price of \$4031.32 that is shown in the first column you deduct the allowance for the car of \$1400, is that correct?

A. That is correct, yes, sir.

Q. And it states then, "Cash difference \$2631.32"; is that correct?

A. That's right. [126]

Q. And then it has a notation, "License and/or title \$55"? A. That is correct.

Q. After adding the last two sums referred to, there is a total of \$2,686.32; is that correct?



(Testimony of Daniel P. Albee.)

A. That's right, sir.

Q. Then you have an item there that says \$1603.22; is that correct? A. That's right.

Q. And then you have an item that says, "Cash \$1085.10"? A. That's right.

Q. Is that correct? A. That's correct.

Q. And the two of them total \$2688.32?

A. That's right.

Q. Is that right? A. That's right, sir.

Q. Now isn't it true, Mr. Albee, that this item here which is opposite the word "cash" on this particular slip of \$1085.10 is the amount that was credited to Mr. Ong's account purchasing this automobile by reason of his turning in a 1953 Cadillac?

A. That's correct.

Q. And do you know to whom that 1953 Cadillac was—who owned that '53 Cadillac that was turned in? A. Who owned it? [127]

Q. Yes. A. Johnny Ong.

Q. No, I am talking about the '53 Cadillac now, Mr. Albee, for which the \$1085.10——

A. Well, this—this car was turned in by—this was either Bill Chan's car or it was Johnny Ong's car, I don't know which. There were one of each of their cars.

Q. That car that is reflected by the one thousand sum there is not the 1951 Cadillac, was it, because this \$1400 refers to the 1951 Cadillac?

A. To the '51 Cadillac, yes, that is correct.

Q. Now, isn't it true, Mr. Albee, that Mr. Chan

(Testimony of Daniel P. Albee.)

had an automobile that he allowed Mr. Ong to turn in to aid Mr. Ong in purchasing his '55 Cadillac?

A. Yes.

Mr. Constine: I will object to that as to whether it is to aid him. The purpose for which the other man put up his Cadillac to aid him in the purchase——

The Court: The facts will have to speak for themselves.

Mr. Riordan: To aid in the purchase.

The Court: The facts will have to speak for themselves.

Mr. Constine: I will object to the word "aid", Your Honor.

Q. (By Mr. Riordan): Do you recall, Mr. Albee, the conversation between yourself, Mr. Ong and Mr. Chan in which Mr. Chan [128] said, "I will turn in my automobile; you will credit—you will sell my automobile and pay off from the proceeds of the sale an obligation that I have with a credit company."?

A. That was my understanding, yes, sir.

Q. And that whatever amount was left over; that is, from the amount realized from the sale and the amount paid to the credit agency, that the same was to be credited to Mr. Ong; do you recall that?

A. I don't recall that in so many words, but I knew that that was the understanding, yes, sir.

Q. Now, Mr. Albee, Mr. Ong gave you \$1600 which was the final amount of cash to be paid on this automobile; didn't you testify to that fact?

(Testimony of Daniel P. Albee.)

A. Mr. Ong did, yes, sir.

Q. Do you recall when he was to pay you the money that he did not quite have the \$1600?

A. That's correct; he didn't.

Q. How much did he have, do you recall?

A. He had approximately—I believe it was fourteen hundred exactly.

Q. And did he subsequently get the additional \$200?

A. Yes, he did.

Q. And can you tell us how he got that \$200?

A. Yes; Bill Chan said, "I think I have that much money at the station." [129]

Q. I see.

A. So he left the little closing office we were in, was gone a few moments and returned with the money.

Q. Fine. And that is the additional \$200?

A. Yes.

Q. So that with the \$1400 that Mr. Ong had and the \$200 that Mr. Chan had, the total sum of \$1600 was given to you; is that correct?

A. That's correct.

Q. And Mr. Chan is the boy who runs a gas station on Polk and Geary; isn't that correct?

A. Yes.

Q. And that gas station is approximately half a block at the most from the Cadillac agency, isn't it?

A. It is right adjacent to our place of business.

Mr. Riordan: That's right. I have nothing further, Your Honor.

In view of the foregoing——

(Testimony of Daniel P. Albee.)

Mr. Constine: I would like to ask a question——

Mr. Riordan: May I offer that document in evidence, Your Honor?

The Court: Let it be admitted and marked next in order.

The Clerk: Defendant's Exhibit A admitted in evidence.

(Whereupon Defendant's Exhibit A heretofore marked for identification was received in evidence.) [130]

### Redirect Examination

Q. (By Mr. Constine): Just one question, Mr. Albee. About the times in question, you heard the agent testify that on the afternoon of February 7——

Mr. Riordan: I am going to object to this question now, Your Honor.

Mr. Constine: No; it is redirect, Your Honor——

Mr. Riordan: I am going to object to this question, Your Honor. This man is the government's witness.

The Court: Just one moment. Allow him to ask the question.

Q. (By Mr. Constine): Mr. Albee, you heard the agents during the afternoon of February 7th testify that Mr. Ong was observed at the Bay Meadows Racetrack; is that correct?           A. Yes.

Q. And you say that to the best of your recol-



(Testimony of Daniel P. Albee.)

lection during the afternoon he was present at the Cadillac agency.

Mr. Riordan: Now——

Mr. Constine: Let me finish my question. I'm not finished yet.

Q. Now do you base that time, or are you sure of the various times involved, or is it your best recollection it was the afternoon?

A. Well, my best recollection it was in the afternoon and it was around about the time that I specified. It must have [131] been right around 4 o'clock.

Q. Well now, you say——

A. Somewhere between 2 and 4.

Mr. Riordan: Just a moment, Your Honor. May I interpose an objection?

Q. (By Mr. Constine): Somewhere between 2 and 4? A. Yes.

Mr. Riordan: At this time my objection would be that this witness is the government witness. He is in effect attempting to impeach this particular man——

Mr. Constine: Oh, no.

Mr. Riordan: ——by prior statements of the government's own witnesses.

Mr. Constine: Your Honor, I am trying to find out——

The Court: He has a right to develop the facts, whatever they may be. Let the record stand.

Mr. Constine: His testimony was that he saw him some time between 2 and 4 o'clock. That is his testimony. Thank you, Mr. Albee.



Mr. Wolski, please.

CHESTER J. WOLSKI

called as a witness on behalf of the Government;  
sworn.

The Court: Your full name, please?

A. Chester J. Wolski. [132]

Q. How do you spell your last name?

A. W-o-l-s-k-i.

Q. What is your occupation?

A. I am a Treasury agent with the United States Bureau of Narcotics.

Q. How long have you been so engaged?

A. The last two years.

Q. Prior to that time what was your business?

A. I was four years as an internal revenue agent.

The Court: Take the witness.

Direct Examination

Q. (By Mr. Constine): Mr. Wolski, you are assigned to the San Francisco field office of the Bureau of Narcotics? A. Yes, I am.

Q. And directing your attention to January 23rd of this year, 1956, did you have an occasion to see the defendant Yep, Rocky Yep, who sits at my right? A. Yes, I did.

Q. And where did you see him, and about what time, if you can recall at this time?

A. At approximately 8:30 p.m. I'd observed the defendant Rocky driving up in a 1952 Mercury at the entrance of 225 Chestnut Street.

(Testimony of Chester J. Wolski.)

Q. Tell us what you observed and what happened.

A. I saw the defendant Rocky enter. In about a minute I [133] followed and joined another agent at a listening post so that we would be able to monitor the conversation that took place between the defendant Rocky and Agent Wu.

Q. This listening post — you might advise the Court, is this some type of radio apparatus or just what is it?

A. Well, it is an electronic device where you can hear the conversation in adjoining rooms.

Q. Do you hear a recording of the conversation or do you hear the conversation as it takes place at the time it takes place?

A. It is direct conversation.

Q. Just like speaking in a microphone and you have the speaker; is that right?

A. That is correct.

Q. Who was present besides Agent Wu and the defendant Rocky Yep?

A. They were the only two in the apartment.

Q. And did you overhear a conversation between the two?      A. Yes, I did.

Q. To the best of your recollection would you kindly advise the Court what Mr. Yep said to Mr. Wu and what Mr. Wu said to Mr. Yep?

Mr. Ringole: That is objected to as incompetent with respect to the allegations of this indictment.

The Court: The objection will be overruled. He may [134] answer.

(Testimony of Chester J. Wolski.)

A. The conversation at the beginning was relative to ordering or narcotics.

The Court: What was said, as near as you can remember, between them at that time and place?

Q. (By Mr. Constine): In substance, tell us to the best of your recollection what was said, Mr. Wolski.

A. The conversation was relative to the ordering—

The Court: That is a conclusion. You will have to state as near as you can what was said.

A. Excuse me, Your Honor. Agent Wu asked him if he could make a delivery for him tonight; Rocky returned that he believed that he could. The conversation went along where Rocky had spoke he had a Caucasian seaman as one of his connections. Agent Wu returned and said, "How is it that you trust a white man?"

He said, "I have been dealing with him for years."

So Agent Wu then asked Yep, he says, "Well, could you do me any good now to tide you over until your seaman connection got into port?"

So the defendant Rocky said yes, that he could; that he had other connections in the city. So he says, "All right," he says, "fine." He says, "Could you get me two ounces?"

Mr. Riordan: May I interrupt for just a moment? What date is this, please? [135]

The Witness: January 23rd.

A. He says, "Why don't you make him a quick

(Testimony of Chester J. Wolski.)

call and we will make a deal." Thereupon Rocky says, "No, I can't call him; I have to go there."

Q. I see.

A. So after that he left the apartment at approximately 9:30 and I again went out in the street and placed the doorway under surveillance again. At approximately 10:20 the defendant Rocky reappeared in his 1953 Mercury, parked again in front of 225 Chestnut, again entered. I followed him and was able to hear the conversation relative to the delivery of the two ounces and the payment for the same by Agent Wu.

Q. Directing your attention to February 1st, 1956, Mr. Wolski, were you on duty that day with other agents surveiling Mr. Yep and Mr. Ong?

A. Yes, I was.

Q. And what time did you commence your particular surveillance that day?

A. Approximately 7 p.m. that evening.

Q. You didn't see either the defendant Yep or the defendant Ong during the day of February the 1st?

A. No, I did not.

Q. When was the first time you saw either Mr. Yep or Mr. Ong and where did you see them?

A. I was with Agent Stenhouse in the government vehicle and [136] we observed the defendant Ong drive a Cadillac coming from John Alley onto Mason and drive away.

Q. You didn't see Yep at that time?

A. No, I did not at that time.

Q. I see.



(Testimony of Chester J. Wolski.)

A. Then later on we picked up on defendant Yep and we followed him around Chinatown to the area of Pacific and Grant where he parked the car for a time, and then we waited for his return and followed him—momentarily lost him and followed him, or rather saw him at Compton's Restaurant at the corner of Geary and Van Ness. Agent Stenhouse went in the restaurant while I parked the vehicle so we would be ready to follow the defendant Yep as he left.

Q. Go on. What happened?

A. And approximately 10 or 15 minutes they were there. I observed the defendant Yep come out to the street and in a few seconds followed by Agent Wu. So I drove up to Agent Wu and asked him what was going on.

Q. Well, I don't think we are permitted to go into those conversations. So anyway you had a conversation with Agent Wu; is that right?

A. Yes.

Q. And then what—

A. Then we continued following the defendant Yep down to the Chinatown area. Again momentarily we had lost view of [137] him, but we did see him parking the car at the vicinity of Mason and Jackson.

Mr. Riordan: You say "we". Who are you referring to now?

A. Agent Stenhouse and myself in the government vehicle.

Q. (By Mr. Constine): What did you see? Tell



(Testimony of Chester J. Wolski.)

me what you observed after you saw Mr. Yep park.

A. I saw him meet an unidentified Chinese male who was later identified as Johnny Ong. They had a conversation and defendant Johnny Ong drove off.

Q. In what? Do you know what he drove off in?

A. He drove off in a '51 Cadillac, license number CKC-040.

Q. And did you see the license at that time?

A. Yes, I did.

Q. And what did you observe Yep do after that?

A. Yep meantime was in and out of this car apparently waiting for someone.

Q. Well, go ahead.

A. And during that time he was in and out of the car walking around the streets. Approximately at 9:30 I had occasion to go over to the drugstore to purchase a pack of cigarettes. As I left the drugstore I observed that the defendant Yep was walking across directly from me on Mason Street and he entered the drugstore. So I stopped and put the doorway under surveillance on the opposite of the street. He was [138] in there approximately five minutes. He again returned out to the street and again waited in and out of the car.

Q. What eventually happened, then?

A. Approximately 10 o'clock I again observed this Cadillac, the same license, and the defendant Johnny Ong parked on the north side of Jackson facing west, and I saw Johnny Ong get out of a car with a child in his arms, and he crossed directly

(Testimony of Chester J. Wolski.)

across the street where he was joined by defendant Yep, and they both entered the common doorway of 1003 Jackson Street.

In approximately a minute's time I again observed the defendant Yep return to his car, a 1952 Mercury, and drive directly to 225 Chestnut Street.

Q. All right. What happened at Chestnut Street? Did you keep Yep under surveillance?

A. No; we had a little vehicle trouble so we had to discontinue surveillance.

Q. You didn't follow Yep?

Mr. Riordan: You had a little what?

A. Vehicle trouble, so we discontinued surveillance.

Q. (By Mr. Constine): You didn't follow Yep back to Jackson Street? A. No, I didn't.

Q. Directing your attention to February 7th, 1956, if you recall that date, two days later, did you have an occasion to see the defendant Yep again and where? [139]

A. Yes, I did. I was stationed at the listening post again.

Q. Is this at 225 Chestnut?

A. At 225 Chestnut. This is approximately 11:30 a.m.

Q. Tell us what occurred.

A. I heard a conversation between Agent Wu and the defendant Yep.

Q. To the best of your recollection would you inform Judge Roche what you heard in substance?

(Testimony of Chester J. Wolski.)

A. The conversation with defendant Yep was hinging around——

Q. Well, what did he say?

A. His connection was interested in buying a new '55 Cadillac, or a '55 Cadillac.

The Court: That may go out. You will have to say as near as you can what was said and who said it.

Q. (By Mr. Constine): What did he say?

A. He said that his connection——

The Court: Who said it?

A. This was defendant Yep stated that his connection was purchasing a 1955 Cadillac.

Mr. Riordan: In view of the fact, Your Honor, that it is merely repeating the same words and the same substance, I will move that it be stricken.

The Court: I will allow the record to stand.

Q. (By Mr. Constine): Is that what you heard——

A. That's right. [140]

Q. ——Mr. Yep say?

A. Mr. Yep said that his connection was intending to buy a 1955 Cadillac.

Q. What else did he say?

A. And that he had strongly advised him not to.

Q. Advised who?

A. Not to buy the Cadillac, that he, his friend, the connection was unemployed and had no source of income and the Cadillac would draw a lot of attention and explanation, so he strongly had advised him not to buy the Cadillac. Then he continued, Defendant Yep, that when he was dealing he always

(Testimony of Chester J. Wolski.)

had on old clothes, didn't dress sharply at all to not draw any attention.

Q. Did you have occasion to overhear another conversation on February 7th, 1956 between Yep and Agent WU, and if you did, where did you hear the conversation? Or perhaps you didn't. Was that the only conversation?

A. No, that was the only conversation on the 7th.

Q. Directing your attention to February 22nd, the early morning of Washington's Birthday, did you have an occasion to see the defendant Johnny Ong?

A. Yes, I did. Agent Hipkins and myself had placed the residence 83 Winfield Street in this city under surveillance awaiting the return of the defendant Johnny Ong.

Q. Was this after the arrest of Yep? [141]

A. Yes, this was.

Q. All right.

A. At approximately 4:30 a.m. of the morning of February 22nd, 1956 we observed Johnny Ong parking his Cadillac in front of his garage doorway at 83 Winfield Street. So we immediately went over there and I identified myself and I told him he was implicated in narcotics.

Q. When you say you identified yourself, what did you say?

A. I showed him my commission and told him I was a Treasury agent.

Q. Did you put him under arrest?



(Testimony of Chester J. Wolski.)

A. I put him under arrest by saying he was implicated in a narcotics transaction. So I then asked him if it would be all right to search the premises. So later on we did that, and throughout the search we had an interrogation going and we——

Q. When you say “we”, who are you referring to?

A. There were Agents Hipkins and another agent who were there searching the premises for contraband narcotics.

Q. And yourself?

A. Besides myself. So I confronted him that he had been observed by the numerous agents in the company of defendant Yep.

Q. Did you refer to any night?

A. I specifically referred to the night of February 1st; [142] that he was seen with this child driving up in a Cadillac, he and defendant Yep going in the doorway; ultimately the defendant Yep had delivered the narcotics directly to our agent, to which he remained silent and gave me no answer.

In the meantime, his wife retorted, “I told you you would get yourself in trouble by fooling around with Rocky.” To this again he gave me no answer, he remained silent.

Q. Did he talk to you at all about his business or occupation?

A. Later on in interrogation — our search revealed that he had expensive clothing——

Q. Well, what did you say to him?

A. So I asked him, I said, “What is your source

(Testimony of Chester J. Wolski.)

of income for all this?" And I asked him what he had for a job. He said, "Well, I am unemployed."

Q. Did he say for how long he had been unemployed?

A. He told me he was unemployed for a year—for at least a year; prior to that he had been employed in a can company or cannery company. So I asked him what the source of income was for this, and he told me he was a gambler.

Q. Did you make any search or examination to determine whether he had a telephone?

A. Yes, I did.

Q. Did he have a telephone?

A. No, he didn't. [143]

Mr. Constine: I have no further questions of this witness.

#### Cross Examination

Q. (By Mr. Riordan): Did you have a warrant for this defendant's arrest?

A. This being a holiday, no, I didn't, sir.

Q. You did not have; is that correct?

A. No, I did not.

Q. You had him under surveillance from 5 o'clock or 7 o'clock the previous evening?

A. I did.

Mr. Constine: Your Honor, I might say this: I am going to object to this line of questioning on this ground: The relevancy of a warrant would be in the event they had obtained something there by their search, found narcotics, and we were attempt-

(Testimony of Chester J. Wolski.)

ing to introduce that into evidence without the necessity of a warrant or complaint. However, nothing was found and we are introducing no physical evidence at this time.

I think the Court can take judicial notice of the fact that February 22nd was a holiday and that complaints are on file in this court on February 23rd in which the defendants appeared before the U. S. Commissioner at that time, the day after the holiday.

Mr. Riordan: The Government would like to have their [144] cake and eat it, too, Your Honor.

Mr. Constine: We are not interested——

Mr. Riordan: And subsequent to the question as to the arrest and notification of the arrest, there was conversation had and questions asked and a search made of the premises. Now I think it is essential to the proper presentation of this case that at least I be allowed to lay the foundation by asking the man if he had a search warrant.

Mr. Constine: Your Honor, the relevancy of the admissions is based on whether they were taken by force or by duress or whether this defendant was threatened or beaten up. That is the type of question that would go to the admissibility of the admission, and not the question of whether there was an arrest warrant.

The Court: I shall allow any conversation had at that time and place in relation to the arrest, and I will give you an opportunity at the proper time to discuss the law of the case.

(Testimony of Chester J. Wolski.)

Mr. Riordan: Can I proceed with this line of questioning, Your Honor?

The Court: Proceed.

Q. (By Mr. Riordan): Did you have a warrant for Mr. Ong's arrest? A. No, I did not.

Q. And did you have a search warrant for his home? [145]

A. I didn't have no search warrant.

Q. You stated that you went into a drugstore at approximately 9:20; is that correct?

A. That's right, sir.

Q. On the evening of February 1, 1956, wasn't it?

A. That is correct, February 1st, 1956.

Q. And at the same time you saw Mr. Yep enter a drugstore; is that correct?

A. I had just purchased some cigarettes and I had gone across the street and I noticed that the defendant Yep was coming towards the drugstore.

Q. And he went into this drugstore?

A. Yes.

Q. Was that the same drugstore which you had entered? A. Yes, sir.

Q. And he stayed in there for about ten minutes; is that correct? A. About five minutes.

Q. Five minutes. And for approximately an hour between 9 p.m. and 10 p.m., roughly, Mr. Yep was in and out of his car, is that correct?

A. That is correct.

Q. In and about the vicinity of Jackson and Mason Street; is that correct?



(Testimony of Chester J. Wolski.)

A. That is correct. [146]

Q. And you did not keep your eyes upon him constantly from approximately 9 until 10 p.m., did you?

A. Except for that incident buying those cigarettes and noticing him going into the drugstore.

Q. And when he was in the drugstore?

A. That is correct.

Mr. Riordan: Thank you very much.

Mr. Ringole: May I have just a question tomorrow morning unless Your Honor wants to continue?

The Court: Is that all from this witness?

Mr. Ringole: I just want to have one or two questions.

Mr. Constine: This is our last witness, so I would suggest that this examination be completed, Your Honor, this afternoon.

Mr. Ringole: I just want to ask him a question.

Q. You saw him go into the drugstore?

A. Yes, I did.

Q. You saw him stay in the drugstore five minutes, didn't you?      A. Yes, sir.

Q. For all you know as you sit there now—for all you know, he may have gotten the heroin in that drugstore.

Mr. Constine: I will object to that question as argumentative, Your Honor, and not a proper question of this witness. "For all you know." [147]

The Court: The objection will be sustained.

Q. (By Mr. Ringole): Will you swear that he didn't get heroin in that drugstore?

(Testimony of Chester J. Wolski.)

Mr. Constine: Object to that question as argumentative.

Mr. Ringole: It is not argumentative, Your Honor.

Mr. Constine: How can this witness swear to anything concerning what Mr. Yep did?

Mr. Ringole: You are making the point that because they were seeing each other that they were getting the heroin from each other. Now he could have gotten heroin in this drugstore.

Mr. Constine: Your Honor, if Mr. Ringole wishes to call for the agent's opinion, I have no objection to his——

Mr. Ringole: I am not asking him for any opinion.

The Court: There is nothing before the Court.

Mr. Constine: I will object to the question as an improper question.

The Court: Objection sustained.

Q. (By Mr. Ringole): Was there opportunity for him—that is, Yep—to have gotten the heroin in that drugstore?

Mr. Constine: Calling for the opinion and conclusion of the witness, Your Honor.

The Court: Sustained.

Mr. Ringole: All right.

Mr. Constine: I have no further questions. [148]

The Court: Step down.

(Witness excused.)

Mr. Constine: At this time, Your Honor, the Government will offer into evidence Exhibit 1 and Exhibit 2 as against each defendant in this case.

The Court: Let them be admitted and marked.

The Clerk: Government's Exhibits 1 and 2 heretofore marked for identification now in evidence.

(Whereupon U. S. exhibits Nos. 1 and 2 heretofore marked for identification were received in evidence.)

Mr. Constine: We will offer all the evidence that has been elicited during this trial testimony against each defendant and against the defendant Yep on the second count of the indictment to which he plead not guilty.

Mr. Ringole: On behalf of the defendant Yep that will be, of course, subject to our objection and to our privilege to make a motion to strike out.

Mr. Constine: At this time the Government will rest its case, Your Honor. In view of those objections we will ask that all the evidence which has been admitted subject to their motion. They may wish to make a motion of acquittal at this time; I don't know. We will rest.

Mr. Riordan: It is now 4:05, Your Honor. I would like to make a motion, as Your Honor knows, in relation to this [149] evidence. Would you like to hear it at the present time?

The Court: Whatever you wish.

Mr. Riordan: If I had my wish I would rather do it tomorrow morning, Your Honor.

The Court: Ten o'clock tomorrow morning.

(Whereupon an adjournment was taken until 10 o'clock a.m. Thursday, April 26, 1956.)

Morning Session, April 26, 1956,

10:20 a.m.

The Clerk: United States versus Yep and Ong, for further trial.

Mr. Constine: Ready for the United States, Your Honor.

Mr. Riordan: Ready for the defense, Your Honor.

Mr. Constine: It is the status of this case, Your Honor, that the Government has rested, and I believe that counsel has some motions to make before Your Honor.

The Court: All right.

Mr. Riordan: Yes. If it please the Court, at this time I would move to strike or exclude the evidence upon the grounds that the Court overruled my objection as to the incompetency, irrelevancy, and immateriality of the evidence that was produced on this stand as to Johnny Ong, and also as to all hearsay statements that were allowed during the course of this hearing, on the grounds that the same were made outside the presence of defendant Ong; that they were matters that were hearsay, that were allowed into evidence without the establishment of the corpus delicti of the conspiracy, being the agreement, and the fact that whatever hearsay statements are allowed in during the course of this trial were not or could not in any way be construed as matters in furtherance of a conspiracy.

Now, I will eliminate some of the, perhaps, tech-



nical [151] objections that I have. Very briefly now, I am going to object to any statements that were made by the agents, any acts or failures to act in relation to statements made by the agents on the part of Johnny Ong at the time of his arrest, and any statements made by his wife. Obviously, those are complete hearsay, Your Honor. In no way could they be construed as an admission against Mr. Ong or in any way in furtherance of a conspiracy.

Now, I am going to pass over some technical objections. I will object to those statements at the time of the arrest and after the arrest, on the grounds that the arrest was made after long surveillance, and obviously, as this sale was at 10:15 the previous evening, there was time, in my opinion, to get a warrant for arrest.

Another objection I have on that ground is that there was lack of reasonable cause to believe that a felony was being committed or had been committed by Johnny Ong.

Another objection that I will have, Your Honor, is that a search of the house was made to ascertain, you will recall, as to whether or not there was a telephone in the home of Mr. Ong. I object to any search of Mr. Ong's home, on the ground that no warrant for the search was obtained, they having had plenty of time to obtain the same.

I also object, Your Honor, to any statements made by Rocky Yep outside the presence of Johnny Ong after Mr. Ong— [152] rather, after Mr. Yep— had been picked up and was in custody; that obviously, even assuming that there had been a con-

spiracy, it was after the last overt act, and it was at the time of the apprehension and could not, in any way, be construed as a furtherance of a conspiracy.

Your Honor, I know you know the evidence better than I do, so I won't—

The Court: How could that be possible?

Mr. Riordan: Well, I think you at least know it as well as I do.

The Court: You are the one that presented it. You are more familiar with your case than I am. I am just here, patiently listening to you gentlemen.

Mr. Riordan: That is right, Your Honor. On the ground of the fact that that conspiracy, Your Honor, had not been charged—or rather, had not been proven—we have to look at this matter on the basis of the obligation that the Government has to prove their case beyond a reasonable doubt and to a moral certainty—that they did not prove any conspiracy or agreement between these two parties, that is no showing of the prime requisite of intent by Johnny Ong. There is no showing of knowledge by Johnny Ong in any acts on the part of Rocky Yep or any intentions on the part of Rocky Yep, or any evidence of Johnny Ong joining as to the intentions of Rocky Yep. [153]

That concludes my motion for the exclusion of the evidence, Your Honor.

Mr. Constine: Does Mr. Ringole wish to make any motion?

Mr. Ringole: May it please the Court, I join in that motion. I want to cite, Your Honor, a few authorities, pro and con.

Counsel will unquestionably admit that the acts and declarations of a defendant, to charge a co-conspiracy, cannot be admissible—and that it is hearsay—in proof of a conspiracy. Here you have in the record—and it is very difficult to separate from the rest of the testimony—you have in the record a great many statements made by Yep outside the presence of the defendant. Now, the overt acts in this particular case are all very innocent acts. That is a very essential thing in the case. The overt acts consist of nothing but meetings—meetings and nothing else—at various periods of time.

Now, there is a case, may it please Your Honor. It is the Moloney case in 200 Federal Second 344 in which the co-conspirator—alleged co-conspirator—Foley, was with Moloney for two weeks, engaged in being with him, maintaining his home. They were very close friends. During that time—I think it was during that two weeks; now, I'm not positive about that, counsel——

Mr. Constine: Yes, I remember that case. [154]

Mr. Ringole: I'm not sure it was within the two weeks, but during a period probably within the two weeks, in that two weeks Maloney sent an extortion letter, and thereafter Moloney and Foley, in a car with the rear license plate off—containing Moloney's shotgun—went to the point of rendezvous, where they were captured by the FBI, and the court reversed the conviction of Foley because of the fact that there was no proof of any kind that he knew that the extortion letter had been mailed.

In another case—that of Crimmins, 123 Federal

Second 271—in that case, may it please Your Honor, Crimmins was a dishonorable attorney who was found guilty of obtaining—of purchasing stolen securities. He lived in Syracuse, New York. The vendor lived in New York City and went from New York to Syracuse with the stolen securities. The charge was conspiracy to take those—to steal these securities and transport them across the state line. The conviction of Crimmins was reversed because there was no proof indicating at all that he knew—though the suspicion was great—no proof at all that he knew they had been stolen in, let us say, Georgia or Virginia and brought across the state line. Since there was no proof of that part of the conspiracy, despite all these overt acts, there was a reversal.

Now, I want to say this to Your Honor: If Your Honor is suspicious that Ong is the source whence Yep obtained this [155] heroin, Your Honor's suspicions, in my humble judgment, are well founded. I am suspicious of that. But we are in a court of law. We don't convict men of suspicions because, under the cases—under the law in a circumstantial case—the hypothesis that leads to innocence must rather be adopted by the court than the hypothesis that leads to guilt.

I regard Your Honor's ruling on my question, that it was argumentative, as correct; but it was a good argument when you consider the fact that just before they brought the baby out, he went in to the drugstore where he could have gotten the stuff in the drugstore. He could have had it already in his possession for months. Now, there is no reason why



anybody should think they had this stuff concealed in the diaper of the baby, for the reason, Your Honor, that these men never knew that they were under surveillance, and why should they do what they did and have a baby involved if they never knew they were being watched? They could have easily gone into their room and gotten the stuff out. So there is no question in my humble judgment, upon this record and having regard for reasonable doubt, and the fact that it has been held that it must be shown beyond a reasonable doubt.

The *Schneiderman* case holds, in 106 Federal Supplement, that suspicion that the overt acts were committed in furtherance of a conspiracy or with the object of conspiracy is not enough. [156]

Now, here is the argument against me, Your Honor. It is predicated upon the *Blumenthal* case, 158 Second, isn't it, page 883, and I am going to distinguish that case.

That argument—the argument used is this, that the overt acts themselves can be the basis for proving the conspiracy. Now, there is no question about it. That case is predicated upon the principle of the case that it cites, namely, that if you see two men breaking into a bank at the same time it is a reasonable conclusion—it is conclusive, as a matter of fact—that those two men are engaged in a conspiracy to burglarize that bank. There is no question about that.

But in this case, as well as in the *Blumenthal* case, all of the overt acts testified to were criminal, in and of themselves.

As a matter of fact, in the Blumenthal case, the attorneys argued that the overt acts proved that the defendants were guilty of independent crimes but were not guilty of a conspiracy, and the Circuit Court of Appeals held that those criminal acts in the concert of all the defendants in those criminal acts were sufficient to convict.

Now, in this case every act was innocent. This case comes right within the principle of the *Crimmins* and *Moloney* cases, and it comes within the language of the *United States versus Di Re* case; and the United States Supreme Court decided in another case—I don't have it at hand just at the moment, [157] I don't see it here just at the moment—that the courts will not lightly convict on the testimony or proof of meetings between the alleged conspirators.

I submit, Your Honor, that the motion to strike should be granted.

Mr. Constine: May it please Your Honor, I would not ordinarily make any lengthy statement of the law, as I am sure Your Honor, with your experience, knows the law of conspiracy. However, in view of counsels' statements—

Mr. Ringole: Could I interrupt you for just a second? I want to say this to Your Honor—I forgot to say it—that I made this argument to His Honor, Judge Harris, in the trial of another case, and His Honor found Yep guilty, despite the argument that I made.

Mr. Constine: Thank you, Mr. Ringole.

I might say, Your Honor, that this is a motion

for an acquittal, being made by the defendant at the end of the Government's case. They have not yet produced——

Mr. Riordan: I don't believe that is correct, Your Honor.

Mr. Ringole: Yes, I make a motion for acquittal, if counsel doesn't.

Mr. Riordan: It is my understanding that I first make my motion to exclude the evidence and, following that, the Court makes a ruling, and of course if the evidence is excluded, then on my motion of acquittal I argue the evidence [158] which is presented in the absence of the hearsay.

The Court: We will have a complete record. Do you make a motion?

Mr. Ringole: Yes, we make the motion; make the motion for acquittal now.

The Court: And assign the legal reasons for it. If you are not prepared, I will take a recess and give you time.

Mr. Riordan: Yes, Your Honor, so the record may be established I think I should request the Court to rule on my motion.

The Court: For the record, then, to take advantage of any error the Court may make——

Mr. Constine: Well, if counsel desires, I will argue the evidentiary questions now, and Your Honor can rule on that, and then he can make his motion.

The Court: Let me say this to you: If you are going to have a proper record in this case, it is

necessary to point out to this Court in every detail the evidence that you wish excluded.

Mr. Constine: Counsel has done that, Your Honor.

Mr. Riordan: We want all the admissions of Mr. Yep excluded.

The Court: That is for the Court to rule upon.

Mr. Constine: We agree with Your Honor, but that is what counsel has done. [159]

Mr. Riordan: Yes, Your Honor; the hearsay statements.

The Court: How can I make a sweeping ruling here in this case that all the testimony will go out without pointing it out?

Mr. Riordan: Yes, Your Honor. I refer to the testimony that I have been referring to previously, as I pointed out. I don't think I have to repeat that. It is in relation to the statements that were made at the time of the arrest of Ong.

The Court: At the time of the arrest if the persons here before the Court were present, they are bound by that statement at that time and place, when they were saying, "Did Johnny Ong have anything to do with this?" and he said, "No he didn't."—

Mr. Constine: Counsel is not repeating the testimony as it was given in court, Your Honor. However, aside from that, any statements made by Mr. Yep at the time of his arrest and after his arrest are admissible only against Mr. Yep, and we asked they be introduced only for that purpose.



The Court: They went in for that limited purpose.

Mr. Constine: That is understood.

The Court: And didn't bind the other defendant.

Mr. Constine: Not after his arrest, that is correct.

Mr. Riordan: Also, the statements I am referring to, Your Honor, are those statements by Mr. Yep in the apartment of [160] Mr. Wu, in which he referred to the fact that he had a local contact. This local contact was about to purchase a Cadillac automobile, and he stated that he advised him not to purchase the automobile, and giving the reasons therefor. Also, the fact that he described his local contact—I believe up in Wu's apartment again—as being a man who has a good family reputation, is above suspicion; a man who was formerly engaged in gambling or was known as a big gambler in and about San Francisco, and a person who had worked, I believe he said, in a cannery—or words to that effect.

Mr. Constine: My answer to that, Your Honor, is every act and declaration of each member of a conspiracy in furtherance of the conspiracy is considered the act and declaration of all the conspirators—that is, during the course of the conspiracy—and those admissions are admissible against all the conspirators, in conformity with the general rules of law and the law of this Circuit. I will cite all the cases Your Honor wishes me to cite. This is during the course of the conspiracy, before Mr. Yep's arrest, and those are admissible.

The Court: So the record is clear, what purpose did you have in relation to this Cadillac car and the sale of it? What was that evidence introduced for?

Mr. Constine: For two purposes: For the purpose of identifying his connection. He stated that he had warned his [161] connection not to buy a 1955 Cadillac car because it would look suspicious and because the man had no job. The day before, the agents observed Mr. Yep and Mr. Ong together at the Cadillac lot. So that is admissible and relevant for the purpose of identifying this man as the connection.

The Court: This man you are pointing to?

Mr. Constine: Mr. Ong. The agents also testified they observed Mr. Ong and Mr. Yep in that very Cadillac. Then the agent testified that on the 17th and on the 19th of April—of February, and I will check those dates to be sure I am citing the correct dates—on February 17th and on February 19th Mr. Wu testified that Mr. Yep offered to place this car—this same 1950 Cadillac car—as security to secure a narcotic transaction, and therefore that is relevant to show that this man's automobile was being considered as security in the narcotic transactions in the future. I think that is all relevant to go to the weight of the evidence, to show the connection of Mr. Yep and Mr. Ong, and the identity of Mr. Ong.

Mr. Riordan: May I point out one fact in relation to that argument, Your Honor? I believe that the testimony of Wu is that Mr. Yep said, "A man

who is dealing," not saying "The man," and he did not say—I am attempting to quote Mr. Wu as close as I can—he did not say this was the man who was the supplier. Now, I believe that is the correct [162] quotation.

Mr. Constine: He referred to him as the same connection he had been talking about all along, Your Honor—Mr. Wu did—and if there is any question they can put Mr. Wu back on the stand and reopen the case.

The Court: Will it stand submitted?

Mr. Constine: Submitted.

Mr. Riordan: Yes.

The Court: The motion to strike will be denied.

Mr. Riordan: I at this time, Your Honor, move for a judgment of acquittal on behalf of defendant Johnny Ong. It is my understanding of the law, Your Honor, on this particular motion, that it is the sole duty of the trial judge to determine whether substantial evidence, taken in a light most favorable to the Government, tends to show the defendant guilty beyond a reasonable doubt. Now, it is my contention, Your Honor, that there is absolutely no substantial evidence in this case which would tend to prove this defendant, Johnny Ong, guilty beyond a reasonable doubt.

Firstly, let me state, Your Honor, just in opening, that I believe the defense of entrapment is properly before this Court. My recollection—again I may be wrong on it, but I will put it forward to the Court—is that on the first day of February, 1956, Mr. Wu telephoned Mr. Yep and asked him

to come to his apartment. I submit to the Court that the facts [163] as shown before this Court are evidence of entrapment on the part of the Government, through Mr. Wu, to have Mr. Yep engage in the sale of narcotics on that particular day. If that be true, then it in turn inures to the benefit of defendant Ong.

Again, Your Honor, I submit—or I state at this time—that there is no substantial evidence before the Court from which this Court can state that, beyond a reasonable doubt, a conspiracy has been proven on the part of Mr. Ong and Mr. Yep. There is no evidence of knowledge by Johnny Ong as to any acts or intentions on the part of Mr. Yep. There was no evidence of any intent on the part of Johnny Ong to deal in narcotics in any fashion. There was no evidence of a mutuality of intention and act on the part of Johnny Ong and Mr. Yep to deal in narcotics.

I think substantially that the Government's case can be seen in the overt acts—at least their case against Mr. Ong—in their overt acts, as alleged in their indictment from No. 2, No. 3, and No. 4. They state that Wee Zee Yep entered the residence of Johnny Ong on February 1st; that on or about February 1st Wee Zee Yep and Johnny Ong travelled together in an automobile; that on or about February 1st Wee Zee Yep and Johnny Ong met at 1003 Jackson Street. That is, in its crystallized form, the evidence that has been produced before this Court, in addition to the overt act of the sale by Mr. [164] Yep. They have proven here, Your



Honor, meetings between Mr. Yep and Mr. Ong. I cite to the Court, as Mr. Ringole did, the case of the United States versus Moloney, in which it was stated:

“A casual association is not evidence of participation in a conspiracy. Presumptions of guilt are not to be indulged in from mere meetings.” I cite, also, the case of the United States versus Blumenthal, 88 Federal Second 522. I will give a brief analysis of the evidence in relation to Mr. Blumenthal in that case.

One, Merchlewitz, was seeking to purchase unlabelled alcohol. He met defendant Blumenthal, who told him to go see Sam. Merchlewitz went to see Sam, and he purchased unlabelled alcohol. The Court held, Your Honor, that there was no evidence, direct or circumstantial, warranting a finding of any agreement between Blumenthal and the other defendants.

“The evidence might be sufficient to arouse suspicion, but it could only reach that dignity by pyramiding presumptions.”

There was no substantial evidence in this case to warrant a finding or a judgment or a verdict of guilty against Mr. Blumenthal.

Mr. Ringole cited the case of the United States versus Di Re. The citation is 332, United States 581. Again, I will [165] recite and attempt to crystallize the facts of that case.

A federal agent was informed that A was to sell B ration stamps. In fact, B is the person who gave the information to the federal agent. A and B

met at point X. The agent and a police officer also drove to place X, and they found B, that is the informer, sitting in the back seat of the automobile, holding ration stamps. Now B, the informer, said that he had obtained the ration stamps from A. Now, the defendant, Di Re, was sitting in the front seat with A, and B in the back seat. A search was made and, as I recall the facts, within the defendant Di Re's shirt was found an envelope containing numerous forged ration stamps.

The Court, in discussing the element of conspiracy involving Di Re with A and B, stated that the presence of Di Re in the car did not authorize an inference of participation by Di Re in the sale of coupons from A to B. It stated, Your Honor, that presumptions are not to be lightly indulged in from mere meetings, and I might also state mere presence.

Now, Your Honor knows that a conspiracy has been classically termed in many fashions, and I think every expert I have ever heard talk about conspiracy says, "Well, it is a very difficult thing to define, despite the many and varied definitions." Basically, I think—at least, in my opinion—the word that most clearly portrays the existence of the [166] conspiracy is that of a partnership, as we understand the partnership in everyday meaning of the word. It is an act of agreement of two people, intending jointly or together to do a specific act. Now, a mere agreement, of course, it not a crime. We have it every day in the business world. It is the doing of an act as applied to this case, which would be criminal in nature. The agreement—the

existence of this partnership, Your Honor—in the field of criminal law must be shown by the Government beyond a reasonable doubt and to a moral certainty. We cannot indulge in suppositions. We cannot indulge in inferences in attempting to overcome this presumption of innocence that exists in favor of every defendant that comes before this court.

We must have some evidence, Your Honor—not necessarily direct, but at least some evidence—showing a criminal partnership.

I contend, Your Honor, that there is no direct proof of a conspiracy in this case, and I don't believe that the evidence that was brought before this court has risen to the dignity of even circumstantial proof of a conspiracy existing in this case. We can only go back to the very foundation upon which any defendant is before this Court, where he is clothed with the presumption of innocence. We can only go back to the fact that the acts that are shown before this court are mere meetings between two individuals, and that [167] meetings alone do not give rise to an inference of guilt in this case.

We are dealing with a very serious charge, and this man remains and stands before this Court with the presumption of innocence, and I contend the Government has not sustained its burden of overcoming and establishing beyond a reasonable doubt the guilt of Johnny Ong.

Mr. Ringole: I associate myself, Your Honor, with counsel on behalf of the defendant in this motion.

Mr. Constine: May it please Your Honor, I understood this was a motion for acquittal at the close of the Government's proof. Now, with reference to the statement that the defendant is entitled to the presumption of innocence as such, I can only say there has been no defense yet. This is a motion at the close of the Government's case, where all the Government's evidence is in, and the only question in this case is, is there a *prima facie* case at this time. At the close of the defense, whatever the defense may be, then is the time to argue the evidence on whether there is a presumption of innocence and whether that presumption has been overcome.

So I only cite to Your Honor the fact that this is merely a motion for acquittal to determine whether we have established a *prima facie* case, and if all the Government's evidence is believed true whether we have established a sufficient case to enable them to go on with their defense. That is the only [168] point here. The case has not been submitted to Your Honor for final judgment.

The same argument you heard this morning was heard in the United States versus Yep and Jong a week or so ago before Judge Harris, and I will say that the best explanation to make to the Court is to cite the law in this circuit on the law of conspiracy and as to the law of *corpus delicti*, because what counsel and Mr. Ringole have completely overlooked are the admissions made by Mr. Yep in identifying Mr. Ong as a co-conspirator and the omissions of Ong by his silence at the time of his arrest, which have been admitted into evidence.



I might say this to you, that the law in the State of California, I understand, is somewhat different from the law in the Federal Courts and this Circuit. In this State you must prove the corpus delicti, independently of the admissions of these defendants. Of course, that is not the law in the Ninth Circuit. Your Honor is well aware of that, because of your own case, the United States versus Tokyo Rose in this Circuit. I will cite that.

It is the United States versus—I believe her name was D'Aquino, but she was commonly called Tokyo Rose. It was in 192 Federal Second 338, which was of course affirmed. It asserts that it is unnecessary to make full proof of the corpus delicti, independent of admissions or confessions by defendant.

Ninth Circuit is quite liberal, and I wish, for the record, to cite the case of Pearlman versus United States, the leading case in this Circuit, 10 Federal Second 460, cited by Judge Roche in United States versus Tokyo Rose, which held that the defendant's own admissions and confessions can establish a corpus delicti if there is some slight corroboration which, of course, is different than the law in the State of California, as I understand the law. I wish to state that counsel's definition of a conspiracy is not quite the definition of Ninth Circuit. A conspiracy is a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose. No formal agreement is necessary in the formation of the conspiracy. Fowler versus United States, Ninth Circuit, 273 Federal 15.

Now, Your Honor, going to the case of Moreno

versus the United States, 91 Federal Second 693—and I cite this for the record so that we may have these citations—the crime is completed when an overt act to effect the object of the conspiracy is done by at least one of the conspirators.

There is the Blumenthal case—not the same case that counsel cited, apparently, but a different one, a later one, which was affirmed by the United States Supreme Court from Ninth Circuit, 158 Federal Second 883, and it stands for the proposition that the overt acts may constitute the best proof of the conspiracy, and such evidence is often used for that [170] purpose.

Now, there is another Pearlman case, in the Ninth Circuit 20 Federal Second 113, which says, Your Honor, certiorari was also denied by the United States Supreme Court. This is the law in the United States, and I would like to read the language of that case just for a moment which applies to the very case before Your Honor:

“The claimed offense is one which, from its very nature, can rarely be proved by direct evidence. Ordinarily, only the results of a conspiracy, and not the private plottings, are observed. Like any other issue of fact, conspiracy may be proved by circumstantial evidence. The crime is almost always a matter of inference, deduced from the acts of the persons accused, which are done in pursuance of an apparent criminal purpose.”

Now, Your Honor, counsel has cited a number of cases where they say mere association is not sufficient to establish a conspiracy. I am familiar with those cases, and we have no quarrel with those

cases. However, in none of those cases did the defendants make admissions during the course of the conspiracy, linking the other members of the conspiracy, as they have here.

In this case, this is what we have: We have a number of meetings between this defendant and the other defendant, [171] observed on the very day the narcotics are transferred; not one meeting at the time, I believe it is five meetings during that one day for a few seconds—for a few minutes—at different parts of town, before the money passed hands, before the narcotics were delivered.

After the narcotics were delivered they were observed, but those are just the meetings. We have the fact that Yep identified Ong as the man who was his connection, and of course, we have the case of *Egan versus United States*, 137 Federal Second 369, decided in the Eighth Circuit. Although Your Honor has admitted the evidence of this defendant's admissions—Ong's admissions—at the time of his arrest, I wish to read to you what the case says. The general rule is the Federal Rule that "when a statement tending to incriminate one accused of committing a crime is made in his presence and hearing and such statement is not denied"—corrected or objected to by him—"both the statement and the fact of his failure to deny are admissible in a criminal prosecution against him as evidence of his acquiescence in its truth."

That is where this defendant was accused of delivering the narcotics to Mr. Yep on the night in question, and he remained silent, made no explanation at all of his activities on that night.

I agree with counsel, Your Honor, that one incident, one circumstance alone does not establish a conspiracy. There is [172] no question about that, and we have no quarrel. But I can only say this to Your Honor, without going into all the facts of the case now, when you pile circumstance upon circumstance upon circumstance, incident upon incident, and coincidence upon coincidence, activity after activity—not one selected instance but a continued pattern of conduct, then the picture of these defendants' conspiracy becomes whole and clear. I might say that this case is somewhat difficult from the fact that Mr. Yep, at his arrest, stated that he wished to take the rap for the other co-conspirators. His statements during the course of the conspiracy, the defendant Ong's failure to deny the accusation, their activities observed by the agents, is substantial proof, at least at this point of the case—there is no defense as yet—to establish a *prima facie* case, and I say we have more proof here, more substantial proof than you have in most narcotic conspiracy cases brought before these courts.

I submit the motion be denied, and the defendant proceed with his defense of the case.

The Court: May the matter be submitted?

Mr. Constine: Submitted, Your Honor.

The Court Is the matter submitted?

Mr. Riordan: Just one reply, Your Honor. I would like to briefly read a statement by the Federal Court in the case of Montford versus United States, 200 Federal Second, 759, in [173] which it was stated, "a defendant's connection with the conspiracy cannot be established by extra-judicial



declarations of a co-conspirator made out of the presence of the defendant, and there must be proof aliunde of existence of the conspiracy and of the defendant's connection with it before such statements become admissible against defendant not present when they were made."

Mr. Constine: Is that a Ninth Circuit case?

Mr. Riordan: I don't know.

Mr. Constine: Well, the rule of the Ninth Circuit is different, Your Honor. I cite Your Honor's own Tokyo Rose case.

The Court: For the purpose of the record, the motion at this time will have to be denied.

We will take a recess.

(Recess taken at 11:02 a.m.) [174]

Mr. Ringole: I want to state, Your Honor, on behalf of this defendant Wee Zee Yep that I represent that he will not take the stand.

Mr. Riordan: Mr. Ong, take the stand, please.

ONG WAY JONG,

(Also known as Johnny Ong)

one of the defendants herein, called as a witness in his own behalf; sworn.

The Court: Your full name, please?

A. Ong Way Jong.

Q. Spell it.

A. O-n-g W-a-y J-o-n-g, also known as Johnny Ong.

Q. Johnny what?           A. Ong.

The Court: Take the witness.

(Testimony of Ong Way Jong.)

Direct Examination

Q. (By Mr. Riordan): Ong Way Jong is the name that is on your birth certificate; is that correct? A. Yes, sir.

Q. And you have been known as Johnny Ong; is that correct? A. That is correct.

Q. When did you adopt the name Johnny Ong? Can you state?

A. I have been using that name ever since I was going to school. [175]

Q. How old are you, Mr. Ong? A. 27.

Q. Now, Mr. Ong, did you ever sell to Rocky Yep any narcotics? A. No, sir.

Q. Did you ever dispense to Rocky Yep any narcotics? A. No, sir.

Q. Did you ever distribute to Rocky Yep any narcotics? A. No, sir.

Q. Did you ever agree with Mr. Yep to sell narcotics? A. No, sir.

Q. Did you ever agree with Rocky Yep to dispense narcotics? A. No, sir.

Q. For the purpose of the record, Rocky Ong is the individual——

Mr. Constine: Yep.

Q. (By Mr. Riordan): I'm sorry, Rocky Yep is the individual who is indicted with you and you know him as Wee Zee Yep; is that correct?

A. That's right, sir.

Q. Did you ever agree with Rocky Yep to distribute narcotics? A. No, sir.

(Testimony of Ong Way Jong.)

Q. Did you ever agree to conceal or transport any narcotic drugs? [176] A. No, sir.

Q. Mr. Ong, how long have you known Rocky Yep?

A. Oh, I would say about a good ten years.

Q. And when did you first meet him?

A. Gee, I couldn't remember that. I knew him when we was kids, both.

Q. And when you first met him where did you live? A. 833 Washington Street.

Q. And where did Rocky live?

A. About the 700 block on Washington Street.

Q. And that is Washington Street here in San Francisco? A. Yes, sir.

Q. About how far from his house was your house? A. About half a block.

Q. Have you been friendly with Mr. Yep for some time? Have you gone around with him for some time? A. Yes, sir.

Q. And do you consider him your closest friend?

A. Well, no, not closest friend, but I have seen him all the time and talked to him all the time.

Q. And besides Mr. Yep did you go around with other people? Was there a crowd that Mr. Yep belonged to and you belonged to? A. Yes, sir.

Q. Now, Mr. Ong, did you ever discuss with Rocky Yep the [177] fact that you would give him your automobile or any automobile that you owned as security or an automobile to have anything to do with any narcotics dealing? A. No, sir.

Q. Now, Mr. Ong, you heard the testimony by

(Testimony of Ong Way Jong.)

the government agents here yesterday, and do you recall they stated that when you were arrested they accused you of being a part of a narcotics ring, or words to that effect? Do you recall that?

A. Yes, sir.

Q. And did you make any reply to this accusation? If you don't understand any word I am using, Mr. Ong, you tell me right away and I can rephrase it.

A. What do you mean by that?

Q. Did you make any statement back to the agents?

A. Not that I can remember, sir.

Q. And is there any reason why you did not reply or say something to the agents?

A. The reason why because when they picked me up they told me about Rocky Yep and that he was being picked up and they come and asked me about it. I didn't want to say anything because I don't want to get my friend involved, because I am a friend of Rocky's, and they picked me up, so I don't want my friend to be picked up, being innocent.

Q. Have you ever in your lifetime been involved with [178] Rocky Yep—let me withdraw that question, please.

Have you ever been charged in any court with gambling and had the charge dismissed?

A. No, sir.

Q. Do you recall the date of February 1, 1956?



(Testimony of Ong Way Jong.)

That is the date you are accused of having participated in a conspiracy with Rocky Yep.

A. The only thing I can recall on February 1st is that the agent stated that the little boy was with me, and I can recall that clearly, because that night the kid was with me I took him to the barber shop. That was his first haircut in a barber shop.

Q. And how many children do you have, please?

A. Two.

Q. And what are their names?

A. The oldest one is Jeffrey Michael Ong.

Q. And how old is he? A. About 4½ years.

Q. What is the name and the age of the youngest? A. Gerald Kevin Ong.

Q. And you commonly refer to him as Kevin, by his middle name, is that correct? A. Yes.

Q. Which child did you have getting the haircut on this particular day? [179]

A. Kevin, the small one.

Q. And you state that you recall this particular day because this is the first time little Kevin had his haircut at a barbershop; is that correct?

A. That is correct, sir.

Q. Now so we can eliminate some of these preliminary matters, Mr. Ong: Do you recall testimony yesterday by the agents that they saw you at the race track on February 7th? That is the date on which you allegedly bought this car, is that correct? A. That is correct, sir.

Q. And they stated that you were seen there with Mr. Rocky Yep? A. No.

(Testimony of Ong Way Jong.)

Q. Do you recall them stating that?

A. Yes, I recall them saying that.

Q. The 7th day of February is the day on which you purchased the car, is that correct?

A. That is correct, sir.

Q. And you heard the agent state that this was a day on which harness racing was going on at Bay Meadows, or at least at the San Mateo Racetrack. I will ask you, Mr. Ong, do you recall at the present time being at the San Mateo Racetrack the day that you purchased this automobile?

A. No, sir. [180]

Q. Do you ever recall during this year being at the San Mateo Racetrack when they had harness racing?

A. No, sir.

Q. Now you heard the testimony yesterday, Mr. Ong, about Rocky Yep coming to your house on the first day of February and I believe also on the 7th day of February. Has Rocky Yep been to your house many times?

A. Yes, sir.

Q. And could you tell us approximately, or the Court, how often he would come to your home?

A. Oh, he used to come there—come into my house about three or four times a week, at least.

Q. I see.

A. Especially when Bay Meadows was running, he always stopped by my house first before he would go to the track and have lunch.

Q. Do you recall whether or not he was at your home on February 1 of this year?

A. I don't recall that, sir.

(Testimony of Ong Way Jong.)

Q. Is it possible that he could have been?

A. He could have been, yes.

Q. Mr. Ong, you heard the testimony yesterday of the agents in which they stated that Mr. Rocky Yep got into your automobile around 3:00 or 3:30 or 3:50 on the afternoon of February 1. Do you recall him getting in at that time [181] at all?

A. No, sir, I don't recall that.

Q. Now you recall the testimony at some time around 7:00 or 7:30 Rocky Yep got into your automobile on this February 1 date; is that correct?

A. Yes.

Q. Can you state at this time whether or not you recall him getting into your automobile at that time?

A. He might have been, yes. In fact, I think—I think he did that night at 10 o'clock.

Q. Now, Mr. Ong, what time did you leave your home—let me ask a preliminary question.

Where did the little boy get his haircut?

A. On Waverly Street, Mel's Barber Shop.

Q. And is that your customary barber there?

A. Yes, sir.

Q. What time did you leave your home with your child to go to Waverly Street to get this haircut?

A. Oh, about 6:30 that evening.

Q. And can you recall at this time after you left your home where you went first, or where you parked or what you did?

A. I went up to Chinatown and I stopped by at a social club on Spofford Alley first for about ten

(Testimony of Ong Way Jong.)

minutes and then I took the kid to the barber shop.

Q. And when you say a social club, what do they do in the social club? A. They play mah jong.

Q. And what is mah jong?

A. That is a Chinese domino game or something like that.

Q. Where did you go then?

A. Then I took the kid to the barber shop.

Q. And what happened when you got to the barber shop?

A. My regular barber is not in and so I left. I went back to the barber shop a little later.

Q. And what time did you return to the barber shop? A. Oh, about 7 o'clock.

Q. About 7 o'clock. And you stated that you believe you saw Rocky Yep some time around 7 o'clock; is that correct?

A. That is correct, sir.

Q. As far as you can recall, did you see Rocky Yep before you returned to the barber shop a second time around 7 o'clock or after?

A. What was that question again, now?

Q. Do you recall at the present time—you testified that you went to the barber shop once around 7:00; is that correct? A. That is correct, sir.

Q. Maybe I misunderstood you, sir. And you stated you went there and your barber wasn't there; is that correct? [183]

A. That is correct.

Q. So you did leave the barber shop then?

A. That is correct.



(Testimony of Ong Way Jong.)

Q. And where did you go then?

A. I went up — my intention was going up to Lucy's Place on Jackson Street.

Q. On Jackson Street. How did you get up—did you go to Lucy's Place?

A. I rang the bell but nobody was in.

Q. How did you get from the barber shop on Waverley Street up to Lucy's Place?

A. I drove up on Jackson and turned up on John Street trying to look for a parking place.

Q. And did you see Rocky Yep at this time that you can recall?      A. Yes.

Q. And what was Rocky Yep doing?

A. Well, I remember distinctly Rocky was sitting in his car and he came out at the time and talked to me. He said he was listening to the fights that night.

Q. And did he then get into your car?

A. He might have been. Now if he did, we drove up to Lucy's Place to see if Lucy was home or not.

Q. And then you did get to Lucy's Place and she was not home; is that correct? [184]

A. That is correct, sir.

Q. And what did you do then?

A. I went back to the barber shop.

Q. About what time did you arrive back at the barber shop, do you recall?

A. I would say about a little after 7:00; I don't recall the exact time.

Q. And what happened when you got into the barber shop?

(Testimony of Ong Way Jong.)

A. Well, my regular barber was in and he was kind of busy and he told me to come back after closing time.

Q. And what time was closing time?

A. Nine o'clock.

Q. And where did you go then?

A. I went back up to Lucy's place. I went up to her sister-in-law's place—apartment. It was in the same building.

Q. As Lucy? A. Yes, sir.

Q. On Jackson Street? A. Yes.

Q. And where is that building in relation to 1003 Jackson? A. Just right next door.

Q. And did you see Rocky again on your second trip up to Lucy's? A. Yes, I did. [185]

Q. And where was he parked then?

A. I think his car was parked on Jackson Street, now.

Q. And you went in then and you watched TV; is that correct? A. That is correct.

Q. Did you have you little boy Kevin with you all this time? A. Yes, sir.

Q. How long were you watching TV, can you recall—approximately, of course?

A. Oh, about 20 minutes.

Q. And you then left. Who did you leave with, can you recall?

A. And the whole bunch of us left. There was Rocky, me, Lucy, Al Fong and Jack Fong I think was in there.

Q. Where did you go, if you recall?

(Testimony of Ong Way Jong.)

A. I went—that was pretty close to 9 o'clock then. I went back to the barbershop then.

Q. And did you then get a haircut in there or did the little boy get a haircut? A. Yes, sir.

Q. And about how long were you in the barbershop, do you recall?

A. I would say about half an hour to 45 minutes.

Q. And after you left the barbershop, where did you go?

A. I went back up to Duck Fong's apartment where they was [186] playing a mah jong game at that time.

Q. You say that you left Lucy's around 9 o'clock; you were at the barbershop half an hour to 45 minutes; is that correct? A. That is correct.

Q. So that would be around 9:40 or 9:45?

A. Yes, sir.

Q. Then you stated you returned up to Jackson Street. This would be around 10 o'clock, is that correct? A. That is correct, sir.

Q. Did you see Rocky Yep at this time?

A. Yes, sir.

Q. And where did you see him, please?

A. He was sitting in his car in front of Duck Fong's place.

Q. And who was with you at that time?

A. My little boy was still with me.

Q. And where did you then go?

A. I saw him sitting out there and I asked him what he was doing. He was waiting for somebody. And I told him I was going up to Duck Fong's

(Testimony of Ong Way Jong.)  
place to see how the game is going on. So we went up together.

Q. And what did you do when you got into Duck Fong's?      A. I played mah jong.

Q. And do you know what happened to Rocky, if anything?

A. Well, I think he stayed there for about five or ten [187] minutes, then he left.

Q.. But you were playing the game; is that correct?      A. Yes, sir.

Q. And did you see Rocky leave?

A. No, sir.

Q. In relation to all of these meetings that you have referred to, Mr. Ong, during any of those meetings was there any mention or any dealings in narcotics between you and Mr. Yep?

A. No, sir.

Q. At that time or prior to that time did you have any agreement with Mr. Yep that you would have anything to do with narcotics?

A. No, sir.

Q. I show you what has been marked as Defendant's Exhibit A—I believe it is in evidence at the present time—and ask you if that is the receipt you received from the Cadillac Motor Car Division for the purchase of the 1955 Cadillac coupe deVille, or whatever it is?

A. Yes, that is the receipt.

Q. It shows there that \$1085.10 was allowed to you as a cash payment on this automobile. Can you explain to the Court that figure of \$1085?



(Testimony of Ong Way Jong.)

A. That \$1085 was—belonged to another car. I turned in two cars. That belonged to a 1953 Cadillac and they wholesaled [188] it and the balance on that car was to put on this '55 Cad.

Q. Now there is a sum there of \$1603.22. Is that cash that you paid for this automobile?

A. That is cash.

Q. Can you tell the Court at the present time where you got that \$1600?

A. Before—before I bought the car I went and asked my brother for a loan, and my sister. My brother loaned me \$1200 and my sister loaned me three hundred.

Q. When you went to purchase this automobile the day of February 7th, how much money did you have with you? How much cash money did you have with you?

A. I have with me about \$1400.

Q. And did you eventually get the other \$200?

A. Yes, sir.

Q. And where did you get that money, please?

A. I got that money from Billy Chan.

Q. And he—is he also the man who gave you the 1953 automobile to turn in? A. Yes, sir.

Mr. Riordan: I have nothing further of this defendant.

Mr. Constine: Did you finish, counsel?

Mr. Riordan: Yes.

Mr. Constine: Does Mr. Ringole wish to examine the witness? [189]

Mr. Ringole: No.

(Testimony of Ong Way Jong.)

Cross Examination

Q. (By Mr. Constine): As I understand it, Mr. Ong, you say that you were a friend of Mr. Yep's; is that correct?

A. That is correct, sir.

Q. And you have known him for many, many years?

A. Yes, sir.

Q. And Mr. Yep used to come to your house a few times a week?

A. For the past six months at least.

Q. Did he have a key to your house?

A. No, sir.

Q. By the way, do you have a telephone in your home, Mr. Ong?

A. The beginning of this year I don't.

Q. The beginning of this year you don't?

A. Yes, sir.

Q. Is there any reason why you have not a telephone?

Mr. Riordan: I will object—just a minute, Mr. Ong. I will object to that question as being incompetent, irrelevant and immaterial.

The Court: What is the purpose?

Mr. Constine: The purpose of the question is merely as a foundation. Counsel asked the witness whether he had ever been involved in any booking operations or charged with a [190] crime. I am merely making an exploratory—

Mr. Riordan: I submit, your Honor, whether this man had a telephone at the beginning of the year or not has no bearing upon whether or not

(Testimony of Ong Way Jong.)

this man has been charged or not charged with any crime.

The Court: It will be sustained.

Q. (By Mr. Constine): But you do not have a telephone now? A. No, sir.

Q. You say when the agents came in to arrest you on the night of February 22nd they told you about observing you on February 1st—your meetings with Mr. Yep, is that right? A. Yes.

Q. They accused you of dealing in narcotics?

A. Yes.

Q. Did you tell them at that time that “I had just taken my son for a haircut; that is all I was doing”?

A. I didn’t tell them that, no.

Q. You didn’t tell them anything, did you?

A. All I told them—did I know that they was following me or not. Then I told them no. Then they asked me was I afraid or something like that, and I said no, why should I?

Q. When they accused you of dealing in narcotics you said nothing, you remained silent, didn’t you? A. That’s right.

Q. Because you wanted to protect Mr. Yep; isn’t that right? [191]

A. No, sir, I wanted to protect myself.

Q. That’s right, you wanted to protect yourself; you didn’t want to say anything.

A. Because if I say anything wrong it might incriminate me.

Q. That’s right. And you know what incrimina-

(Testimony of Ong Way Jong.)

tion means, don't you? You have been committed of a felony, have you, Mr. Ong?

A. Yes, sir.

Q. That was possession of heroin in Los Angeles, wasn't it? A. That is correct.

Q. In 1951 you were charged with that offense?

A. That is correct, sir.

Q. You pled guilty to it?

A. That's correct.

Q. You knew that Yep was dealing in narcotics, didn't you? A. No, sir.

Q. You never discussed heroin with him?

A. No, sir.

Q. Did you ever discuss stuff with him?

A. Never did.

Q. Junk? A. No, sir.

Q. You know what stuff means?

A. I know what it means.

Q. You know what junk means? [192]

A. Yes, sir.

Q. Now you say you weren't trying to protect Rocky, you were trying to protect yourself when you wouldn't say anything?

A. That is correct, sir.

Q. Now this automobile that you purchased, you paid \$1400 in cash, didn't you?

A. \$1600 in cash.

Q. Yes, but you only had \$1400 with you?

A. Yes, sir, that is correct.

Q. And didn't you discuss with the automobile salesman about financing the additional \$200?



(Testimony of Ong Way Jong.)

Wasn't there some discussion about perhaps getting a loan for that \$200?      A. Yes, sir.

Q. There was; but you didn't want to fill out a personal history questionnaire for that loan, did you?      A. No, sir.

Q. Why not?

Mr. Riordan: I will object to this, your Honor, as being incompetent, irrelevant and immaterial.

The Court: He wants to finish the question.

A. When Billy told me that he had the money, there was no sense of my going and making a loan for \$200. That is when Billy went to the station and got the \$200 so I could pay the full amount of that car.

Q. You turned in a 1951 Cadillac on that car, didn't you? [193]      A. Yes, sir.

Q. And the day that you had your son with you and got the haircut you say was February 1st; was that right?

A. That is what they claimed. That is what the agent said.

Q. You don't have any independent recollection of that being on that day?

A. I am not sure of that day.

Q. It could have been February 2nd that you had your son's hair cut?

A. It could have been, yes, sir.

Q. So you don't recall, really, at this time what happened on February the 1st?      A. No, sir.

Q. Do you recall meeting this man at five minutes to 4:00?      A. No, sir.

(Testimony of Ong Way Jong.)

tion means, don't you? You have been committed of a felony, have you, Mr. Ong?

A. Yes, sir.

Q. That was possession of heroin in Los Angeles, wasn't it? A. That is correct.

Q. In 1951 you were charged with that offense?

A. That is correct, sir.

Q. You pled guilty to it?

A. That's correct.

Q. You knew that Yep was dealing in narcotics, didn't you? A. No, sir.

Q. You never discussed heroin with him?

A. No, sir.

Q. Did you ever discuss stuff with him?

A. Never did.

Q. Junk? A. No, sir.

Q. You know what stuff means?

A. I know what it means.

Q. You know what junk means? [192]

A. Yes, sir.

Q. Now you say you weren't trying to protect Rocky, you were trying to protect yourself when you wouldn't say anything?

A. That is correct, sir.

Q. Now this automobile that you purchased, you paid \$1400 in cash, didn't you?

A. \$1600 in cash.

Q. Yes, but you only had \$1400 with you?

A. Yes, sir, that is correct.

Q. And didn't you discuss with the automobile salesman about financing the additional \$200?

(Testimony of Ong Way Jong.)

Wasn't there some discussion about perhaps getting a loan for that \$200?           A. Yes, sir.

Q. There was; but you didn't want to fill out a personal history questionnaire for that loan, did you?           A. No, sir.

Q. Why not?

Mr. Riordan: I will object to this, your Honor, as being incompetent, irrelevant and immaterial.

The Court: He wants to finish the question.

A. When Billy told me that he had the money, there was no sense of my going and making a loan for \$200. That is when Billy went to the station and got the \$200 so I could pay the full amount of that car.

Q. You turned in a 1951 Cadillac on that car, didn't you? [193]           A. Yes, sir.

Q. And the day that you had your son with you and got the haircut you say was February 1st; was that right?

A. That is what they claimed. That is what the agent said.

Q. You don't have any independent recollection of that being on that day?

A. I am not sure of that day.

Q. It could have been February 2nd that you had your son's hair cut?

A. It could have been, yes, sir.

Q. So you don't recall, really, at this time what happened on February the 1st?           A. No, sir.

Q. Do you recall meeting this man at five minutes to 4:00?           A. No, sir.

(Testimony of Ong Way Jong.)

Q. Do you recall meeting him at 7:30 or 7:15 at night at John Place — John's Alley or John Street?

A. If they claim—if the agent said it was on February 1st, I would have said yes.

Q. But you don't recall now of your own knowledge, just because they say so; is that right?

A. That's right.

Q. You really don't remember anything about this, do you?

A. I remember that day when the baby's hair was first cut; it was somewhere around the early part of February. [194]

Q. The early part of February. And you remember meeting Rocky but you didn't talk about narcotics at all?      A. Never did, sir.

Q. Did Rocky know about your conviction for possessing heroin? Did you ever tell him?

Mr. Riordan: Just a minute, Mr. Ong. I am going to object to that, your Honor, as to what Rocky Yep knew or what Rocky Yep didn't know about this man's past.

The Court: The objection will be sustained.

Q. (By Mr. Constine): Did you ever tell him?

A. No, sir.

Q. On the day you got the haircut for your child you drove your own 1951 Cadillac, didn't you?      A. That's right.

Q. And that evening you drove the car yourself, didn't you?      A. That's right.

Q. No one else drove it?      A. No, sir.



(Testimony of Ong Way Jong.)

Q. Now you say that you arrived back from the barber shop about 10 o'clock at night on the day in question and you met Rocky and you went up and played mah jong?

A. Something like that; about 10 o'clock.

Q. And Rocky stayed inside for five or ten minutes?

Mr. Riordan: No, he didn't state that. [195]

Mr. Constine: That's what he said, counsel.

Mr. Riordan: No, he said he believes that Rocky stayed in there for about five or ten minutes, and he stated, "I didn't see him leave."

Q. (By Mr. Constine): Is it your best recollection that he stayed in there for about five or ten minutes with you?

A. We went in there together and the whole bunch of us was playing mah jong and I stayed in played myself.

Q. And Rocky was with you?

A. He was inside the apartment.

Q. He walked upstairs with you?

A. Yes, sir.

Q. And that was Bill Fong's apartment?

A. No, sir.

Mr. Riordan: He didn't testify to that.

Mr. Constine: I am just asking. Whose apartment was it?

Mr. Riordan: Just a moment, your Honor. He testified on direct that that was Duck Fong's apartment.

The Court: Q. Whose apartment was it?

(Testimony of Ong Way Jong.)

A. It is Duck Fong's apartment.

The Court: Let's proceed.

Q. (By Mr. Constine): Can you at this time tell us how long Rocky Yep stayed in that apartment with you when you got back about 10 o'clock?

A. As I said before, about five or ten minutes; that's all [196] I know. I was playing mah jong at that time.

Q. And that is your best recollection?

A. Yes, sir.

Q. And how long did you play mah jong?

A. For a good half an hour at least.

Q. A good half an hour at least?

A. That's right.

Q. That was before you came downstairs?

A. That's right.

Q. Didn't you meet Rocky the moment you came outside and rode around the block with him?

A. I think he went back up to Duck Fong's apartment.

Q. Let me ask you this: After Rocky left after being with you for five or ten minutes about 10 o'clock, you say you continued to play mah jong?

A. That's right.

Q. You were there at least a half hour?

A. That's right.

Q. The next time you saw Rocky you say was up in the apartment?

A. He came back in the apartment.

Q. He came back to the apartment?

A. That's right.

(Testimony of Ong Way Jong.)

Q. You didn't meet him on the street?

A. No, sir. [197]

Q. You didn't ride around the block with him?

A. I might have, yes. We came out of the apartment together and it was getting kind of late, it was getting to about close to 11 o'clock. It was getting late, and so I said I might as well go home, take the kid home.

Q. Because you wanted to take the kid home you got in Rocky's car and drove around the block, one block, and drove off again, is that correct?

A. He asked me to go with him and have something to eat and go home. I decided when we was riding in the car I might as well not, because my wife was waiting for me.

Q. Do you mean to say that you left your wife and children and got in the car to go for dinner and then changed your mind when you were in the car?

Mr. Riordan: I will object to this, your Honor; it is argumentative. He didn't mention that he left his wife and his children in the apartment at all.

The Court: Let us proceed properly.

Q. (By Mr. Constine): I ask you this question: When Rocky came back after 10 o'clock, you had been playing for about a half hour or more at mah jong?

A. Yes, sir

Q. He met you in the apartment?

A. Yes, sir.

Q. You came outside and you got into his car?

A. That is right.

(Testimony of Ong Way Jong.)

Q. And you rode around one block and came back?

A. I wouldn't say one block; about four or five or six blocks.

Q. Where were your wife and children?

A. They were home.

Q. Home where?           A. At 83 Winfield.

Q. But you just said it was late, you wanted to take your wife and children home.

A. I said I wanted to take my kid home, my boy that was with me.

Q. And where was your kid?

A. Which one?

Q. That was with you.

A. He was with me all the time.

Q.. You took him in Rocky's car with you?

A. Yes, sir.

Q. Around the block once?           A. Yes, sir.

Q. Around the block four or five times, I should say?           A. Yes.

Q. You were thinking of going to dinner at 11 o'clock that night with your child?

A. Yes, sir. [199]

Q. And how old is your child?

A. About a year and a half—18 months now.

Q. You say that was some time around 11 o'clock?

A. I would say something like that.

Q. One second. Mr. Ong, do you recall the day of February 8th? Do you recall the time after you



(Testimony of Ong Way Jong.)

got your new Cadillac, your '55 Cadillac?

A. On February the 8th?

Q. Yes. You got it on February 1st. February 8th was after you got the Cadillac; wasn't that right?

A. February the 7th I got the Cadillac.

Q. February the 7th? A. February 7th.

Q. The day after you got the Cadillac was the 8th; isn't that right? A. That's right.

Q. You met Rocky that morning, didn't you?

A. I don't recall that, sir.

Q. Do you recall being with Rocky that morning on February 8th?

A. He might have been.

Q. You don't remember? A. No, sir.

Q. Do you recall an instance in which Rocky and you went to the mah jong game on Spofford Alley and Rocky went out for [200] dinner and came back and met you? Do you remember when that was? A. What day was that?

Mr. Riordan: I will object. How can this man remember when Mr. Yep went to dinner and came back?

Mr. Constine: I will withdraw the question. I will lay a foundation if you will just bear with me for one moment.

Q. The day that you bought the Cadillac was February 7th. A. That's right, sir.

Q. Do you remember meeting Rocky that night at the mah jong game?

A. No, I don't remember that.

(Testimony of Ong Way Jong.)

Q. Do you recall being at the mah jong game at all that night after you got the Cadillac?

A. I don't recall that, sir.

Q. You just don't remember?

A. That's right.

Q. What is your business or occupation? What do you do for a living?

A. Now? I was working for Billy—Polk and Geary gas station.

Q. When?

Mr. Riordan: You asked him now.

Q. (By Mr. Constine): At the present time you are working for him? Today? [201]

A. No, not today.

Q. Well, last week? A. Yes.

Q. How many days a week are you working?

A. Six days a week.

Q. When did you commence work?

A. What do you mean by that?

Q. When did you start working for him?

A. When I got bailed out.

Q. When you got bailed out that was when you started work?

A. For Billy. I worked for him before too.

Q. You were arrested on February 22nd, Washington's Birthday; do you remember that?

A. Yes.

Q. Do you recall telling the agents that you hadn't worked for a year?

A. I don't recall that. All I told them, I haven't been working from January or February, some-

(Testimony of Ong Way Jong.)

thing like that.

Q. Had you been working within a year of February 22nd? A. No, sir.

Q. You worked in a cannery once, didn't you?

A. Yes, sir.

Mr. Constine: I have no further questions.

Redirect Examination

Q. (By Mr. Riordan): Now, Mr. Jong, so it will be clear [202] for the Court, you associate the date of February 1st with the date that you had the haircut for the little boy; is that correct?

A. That is correct, sir.

Q. And did you have your little boy up at Doc Fong's any other night during this year except this night you are referring to?

A. I might have, yes, sir.

Q. You are attempting to recall this particular date with the specific event, and that being the haircut of your little boy; is that correct?

A. That is correct, sir.

Q. And you remember that on the night you had your little boy's hair cut you did meet Rocky Yep when he was parked on Jones street; is that right? A. That's right, sir.

Q. Was the baby in your car at that time?

A. Yes, sir.

Q. Now, any other night when you may have met Rocky Yep on Jones Street, did you ever have anything to do with narcotics or talk to him about it or deal with him in narcotics? A. No, sir.

(Testimony of Ong Way Jong.)

Q. Now, you state, Mr. Jong, that you don't recall whether or not you met Rocky Yep on the evening of February 8th at the Mah Jong Club or Social Club on Spofford; is that correct? [203]

A. That is correct, sir.

Q. However, you stated it is possible you may have met him there; is that correct?

A. That is correct, sir.

Q. Have you seen Rocky very often this year, or how many times or at all, at the Spofford club, or, rather, at the social club on Spofford?

A. He was there often. He was there about almost practically every day, or at least four or five times a week anyway.

Q. Have you seen him there sometimes?

A. Yes, sir.

Q. The question was gone into as to whether or not around eight—around nine o'clock—I am sorry—around ten o'clock when you came back from the barber shop you saw Rocky up on the corner of Jackson and Mason, that the two of you walked into 1003 Jackson Street to go to Doc Fong's apartment; is that right?

A. That's right, sir.

Q. And you state you believed it was around five minutes?      A. That is so.

Q. Do you actually recall now seeing him there for five minutes?      A. About five minutes, yes.

Q. But you didn't see him leave; is that correct?

A. No, sir. [204]



(Testimony of Ong Way Jong.)

Q. So that you don't know actually how long he was there, is that correct?      A. Yes, sir.

Mr. Constine: That has been answered and asked three times, your Honor. He said he saw him there for five minutes.

Mr. Riordan: No, he says he believed——

Mr. Constine: The record speaks for itself.

Mr. Riordan: That is right.

Mr. Constine: Counsel is leading the witness.

Q. (By Mr. Riordan): Now, Mr. Wong, the question was asked of you whether or not you were found guilty of a felony in relation to narcotics. What year was that, please?

A. I believe it was in '51.

Q. And did you plead to that charge?

A. Yes, sir.

Q. And how did you plead?

A. I plead guilty to that charge.

Q. Will you tell the Court what were you doing, what was your occupation in 1951 when you were picked up on this charge?

A. I was a merchant seaman at that time.

Q. And where were you picked up, please?

A. Down in Los Angeles.

Q. And would you tell the Court the circumstances of your being picked up, please?

Mr. Constine: Well, now, just a moment, your Honor. [205] Before counsel goes into this, is it my understanding that he is going to open up the subject of this defendant's activities in regard to narcotics back in Los Angeles? I might say that

(Testimony of Ong Way Jong.)

if he does that the government is going to feel free to examine him about all his associates and connections at this time in the narcotic traffic.

Mr. Riordan: I don't believe that these questions, your Honor—however, I will ask for a ruling from the Court, if possible, that I feel——

The Court: To save you from yourself, I will sustain the objection.

Mr. Riordan: Very well, your Honor. I have nothing further.

The Court: We will take a recess, until two o'clock.

(Thereupon an adjournment was taken until 2:00 o'clock p.m.) [206]

Thursday, April 26, 1956—2:00 P.M.

### ONG WAY JONG

(Also known as Johnny Ong)

recalled as a witness for the Defendants; previously sworn.

Mr. Constine: Is this redirect examination?

Mr. Riordan: Yes.

### Redirect Examination

Q. (By Mr. Riordan): Mr. Jong, you testified in relation to meeting Rocky Yep after you walked out of the mah jong game at around eleven o'clock or at about that time; that you got into the car with him; you stated your child was with you; is that correct?      A. That is correct, sir.

(Testimony of Ong Way Jong.)

Q. And you stated that your intention was to get something to eat; is that correct, sir?

A. That is right, sir.

Q. And you got in the car, and after being in the car you changed your mind and decided you would go home; is that correct?

A. That is correct, sir.

Q. Is it a common custom among the Chinese to have a bite to eat around midnight?

Mr. Constine: I will object to that, your Honor, as incompetent, irrelevant and immaterial whether it is a custom to eat at eleven o'clock at night. The acts speak for themselves. [207]

The Court: Objection sustained.

Mr. Riordan: I think that is all.

Mr. Constine: I have no questions, unless Mr. Ringole wishes to examine.

Mr. Ringole: No.

Mr. Riordan: Step down.

Bill Chan, please.

### WILLIAM CHAN

called as a witness on behalf of the Defendant Jong; sworn.

The Court: Your full name?

A. William Chan.

Q. Spell it.

A. W-i-l-l-i-a-m C-h-a-n.

Q. Spell your last name.                      A. C-h-a-n.

Q. C-h-a-n?                      A. Yes.

Q. Where do you live?                      A. 1044 Jackson.

(Testimony of William Chan.)

Q. Your business or occupation?

A. Service station operator.

Q. Service station operator?

A. That's right.

The Court: Take the witness. [208]

### Direct Examination

Q. (By Mr. Riordan): Before February 7, 1956, were you the owner of an automobile, Mr. Chan?

A. Yes, sir.

The Court: Speak up so the reporter can get it.

Q. (By Mr. Riordan): Will you tell us what type of an automobile that was?

A. 1953 Cadillac coupe.

Q. And do you own that automobile at the present time? A. No, sir.

Q. What did you do with it, please?

A. I turned it over to Johnny Ong.

Q. Is that the Johnny Ong who is sitting here in court? A. Yes, sir.

Q. What was the purpose of turning it over to Johnny Ong?

A. Because I couldn't keep up the payments and insurance. I couldn't keep up, so it was a good opportunity for me to get rid of the car.

Q. What happened to your car, if you know? Was it sold or just what?

A. The Cadillac people took the car and they wholesaled it out to a wholesaler and then they paid off the bank for me and the balance of the car was put towards Johnny Ong's car.



(Testimony of William Chan.)

Q. Now, you recall the day that Johnny Ong bought this car, do you? [209] A. Yes, sir.

Q. And were you with him when he handed over a certain amount of cash to the Cadillac people?

A. Yes, sir.

Q. How much money did he have when he first——

Mr. Riordan: Let me withdraw it; I am not presenting that question properly, your Honor.

Q. In addition to the automobile you let Mr. Jong have, did you give him any money?

A. Yes, sir.

Q. How much did you give him?

A. \$200.00.

Q. And why did you give him this \$200.00?

A. Because he didn't have enough on him to pay the balance of the car.

Q. Now, approximately what time did you on this day, February 7th, did you give him this money, do you recall?

A. About three o'clock.

Mr. Riordan: About three o'clock. Thank you very much.

Mr. Constine: One second: I have no questions.

The Court: Step down.

Mr. Riordan: Helen Ong, please.

### HELEN ONG

called as a witness on behalf of the Defendant Jong; sworn.

The Court: Q. Your full name. [210]

(Testimony of Helen Ong.)

A. Helen Ong.

Q. Spell it. A. H-e-l-en O-n-g.

Q. O-n-g? A. Yes.

The Court: Take the witness.

Direct Examination

Q. (By Mr. Riordan): Helen Ong, are you the sister of Johnny Ong, the defendant here in court?

A. Yes, sir.

Q. Do you recall your brother Johnny buying a 1955 Cadillac? A. Yes.

Q. Do you recall approximately when that was?

A. Well, I know it was before he buyed the Cadillac he came to me and told me that he wants to buy a car.

Q. And what else did he say to you?

A. Well, he said he needed some money and then he asked me if I can lend him some money.

Q. And did you lend him money?

A. Yes, I did.

Q. How much did you lend him?

A. \$300.00.

Q. And do you recall approximately when this was that you loaned him the money for the car? Can you give us some date?

A. Well, exactly I don't know what is the date, but I [211] recall that it was just before he got the car.

Mr. Riordan. I see. Thank you.

(Testimony of Helen Ong.)

Cross Examination

Q. (By Mr. Constine): What car is that, Miss Ong?

A. Well, the car that he wants to buy.

Q. Was this the 1951 Cadillac?

A. You mean the new car he wants to get?

Q. Yes.

A. Well, he wants to get a car; he told me just a car.

Q. He has had more than one car, hasn't he?

A. Just one car, 1951 car.

Q. And is that the car you are talking about?

A. Yes.

Mr. Constine: No further questions.

Redirect Examination

Mr. Riordan: I think that, in all fairness, this witness is confused.

The Court: She may be confused, but I am sure that you are not.

Mr. Riordan: Well, that's right, your Honor—at least I hope not.

Q. Now, you know your brother bought a 1955 Cadillac automobile?

Mr. Constine: I am going to object to leading this witness, your Honor. He can ask the questions of the witness; he doesn't have to lead her. [212]

Mr. Riordan: I'm sorry.

Q. Do you know that recently within the last couple of months your brother has bought an automobile? A. Yes.

(Testimony of Helen Ong.)

Q. What model automobile is that, if you recall?

A. The new car?

Q. Yes, the new one. A. 1955.

Q. Did you lend him money to buy that car? I am speaking of a 1955 car? A. Yes.

Q. Now, you recall that before he bought this car he had a 1951 automobile; is that correct?

A. That is right.

Q. But you are speaking of the 1955 automobile; is that right? A. Yes.

Mr. Riordan: I have nothing further.

#### Recross Examination

Q. (By Mr. Constine): Miss Ong, you don't know whether your brother used that \$300.00 for the car, do you?

A. He told me that he wants to buy a new car.

Q. You don't know whether he actually used that money that he borrowed from you, you weren't there?

A. Well, he have intention to buy a new car.

Q. Yes, but do you know whether he used the \$300.00 that you gave him for that car of your own knowledge?

A. Yes, he told me he is going to get a new car.

Q. Do you know whether he used that \$300.00 to buy a new car?

Mr. Riordan: I will object to the question, your Honor. She obviously cannot know.

The Court: He is entitled to a record. Answer the question.



(Testimony of Helen Ong.)

Q. (By Mr. Constine): Do you know whether he used the same money that you gave him to purchase that car? A. Yes.

Q. You were there when he handed the money over? A. I gave him the money.

Q. All you know is that you gave him \$300.00?

A. Yes.

Q. You didn't see him use the money, did you?

A. Well, he told me he is going to buy a new car.

Q. And that's all you know is what he told you?

A. Yes, he needs the money to buy a new car.

Mr. Constine: That is all.

Mr. Riordan: Nothing further.

The Court: Step down.

Mr. Riordan: Eddie Ong, please. [214]

### EDWARD ONG

called as a witness on behalf of the Defendant Ong; sworn.

The Court: Q. Your full name, please.

A. Edward Ong.

Q. E-d-w-a-r-d? A. That's right.

Q. Spell the last name. A. O-n-g.

Q. H-o-n-g? A. O-n-g.

The Court: Take the witness.

### Direct Examination

Q. (By Mr. Riordan): Edward Ong, are you the brother of Johnny Ong, the defendant sitting in this court? A. That's right.

(Testimony of Edward Ong.)

Q. Do you recall your brother getting a new car this year?      A. Yes, I do.

Q. And what kind of a car did he get, please?

A. A 1955 Cadillac.

Q. Did you ever see that car?

A. Just once.

Q. And when was that, if you can recall?

A. Right after he bought it, about three days later.

Q. Now, Mr. Ong, did he borrow any money from you before the first time you saw this 1955 automobile? [215]      A. Yes, he did.

Q. How many days before you first saw this car, can you tell me, approximately?

A. About a few.

Q. A few days?

A. I am sorry; I didn't hear.

Q. Is that what you said, a few days?

A. A few. Give me that question again.

Q. Can you recall approximately how many days before you saw the 1955 car that you loaned money to your brother John?

A. Right after I saw—he bought the car and I saw the car a few days later.

Q. You loaned him money after he bought the car?

A. I loaned him money before he bought the car.

Q. Yes, but I am trying to ask you if you can recall how many days before you saw the car that

(Testimony of Edward Ong.)

you loaned him money. If you don't understand me, tell me.

A. That would be about approximately two weeks.

Q. And how much money did you loan him?

A. \$1200.

Mr. Riordan: All right. Thank you.

Cross Examination

Q. (By Mr. Constine): When you say you loaned him \$1200, was that in cash, Mr. Ong?

A. Yes.

Q. What were the denominations of the bills?

A. \$20.00.

Q. All \$20.00 bills?

A. Twenties and tens.

Q. Twenties and tens. Did you have the money home or where did you get it? A. Home.

Q. You had the money at home, \$1200 in cash?

A. Yes.

Q. And was anyone there when you gave the money to your brother? A. No.

Q. Just you and your brother? A. Yes.

Q. And who was the first person you told about loaning this money since the incident? When was the first time you have told anybody about this?

A. Nobody.

Q. You have told nobody? Didn't you have a conversation with Mr. Riordan about this before coming to court?

Mr. Riordan: Do you understand the question?

(Testimony of Edward Ong.)

Q. (By Mr. Constine): Didn't you talk to Mr. Riordan about this incident in which you gave \$1200 to your brother before coming to court? Didn't you talk it over with Mr. Riordan?

A. All I know is, he asked me to borrow money before the time.

Q. Yes. Now, who was the first person that you told about [217] loaning the money to your brother?

Mr. Riordan: I will object to the question. There is no evidence that he ever told anyone.

Q. (By Mr. Constine): Did you ever tell anyone that you loaned money to your brother?

A. Anyone? No.

Q. Didn't you tell Mr. Riordan that before you came to court? A. Yes, I did.

Q. When was the first time you told him about it? A. That I can't recall.

Q. You can't recall that. Didn't you talk to him today about it, this morning?

A. No, not today.

Q. Yesterday? A. I can't recall.

Q. Is this whole incident hazy in your mind about loaning the money?

A. All I know is, I lent him before the time he bought the car; that is all I know.

Q. All you know is that you gave him \$1200; is that right? A. Right.

Q. That is all that you can recall, then?

A. Yes.

Mr. Constine: I have no further questions.

Mr. Riordan: I have nothing further.



The defense of Johnny Ong rests, your Honor.

Mr. Constine: What about Mr. Yep?

Mr. Ringole: He rests.

Mr. Constine: The Government rests, your Honor.

(Thereupon after argument by counsel, which is omitted from this transcript, the following proceedings were had:)

The Court: There is much to be said in your relation to this case, but I am in doubt about it being helpful in any way. But on the theory of the defense here I would have to disbelieve all the testimony of the witnesses for the Government. On the other hand, in appraising the witnesses here, and particularly the defendants themselves, I can understand how from their testimony I couldn't possibly give it the credence that I could the other witnesses, and for that reason I find both of the defendants guilty as charged in the indictment in counts 1, 2 and 3.

Mr. Constine: Does counsel have any motion to make at this time?

The Court: If there are any motions you wish to make, you can make them.

Mr. Riordan: I was going to ask for time in which to make them, your Honor.

The Court: What day for judgment?

Mr. Ringole: As to Wee Zee Yep, your Honor, I ask that [219] that go over to May 7th in connection with other matters.

The Court: Whatever date you wish, not more than two nor less than five. What is the rule?

Mr. Constine: Excuse me, your Honor. Yep was already on on a number of cases before your Honor on May 7th.

Mr. Ringole: Yes.

The Court: Is that agreeable?

Mr. Constine: Oh, yes, your Honor.

Mr. Riordan: Would that be the same date for Mr. Ong?

Mr. Constine: I don't know if counsel wishes this to be referred to the probation officer or not, because that has been done in Mr. Yep's case but not in Mr. Ong's case.

Mr. Riordan: I was going to make a motion, your Honor, and I am not absolutely sure of the procedure, now.

Mr. Constine: You won't prejudice yourself by asking for probation.

Mr. Riordan: I see. Then I will ask for a probationary report.

The Court: So that we may have a full understanding of that, I will refer to the Probation Department for a pre-sentence report.

Mr. Riordan: I see, your Honor; and I still have the opportunity to make my proper motions at the proper time?

The Court: You can make it at any time before that.

Mr. Riordan: Before the 7th of May; is that correct? [220]

The Court: Yes.

Mr. Riordan: And I would also ask the Court at this time to allow my client, Mr. Ong, to remain

on bail, in view of the fact that he has a wife and two children, pending the making of the motions, if at all possible.

Mr. Constine: I believe he is on what? \$5,000 bail now?

Mr. Riordan: Yes, that is correct.

Mr. Constine: We will submit that to your Honor in view of his prior conviction and this conviction now.

The Court: Do you resist this application?

Mr. Constine: Well, I just don't know too much about it. I could ask Mr. Wu. Mr. Wu, do you have any indication that he might flee? Does he own his home here?

Mr. Wu: Yes, he does.

The Court: He might make a good guess.

Mr. Constine: He is on a substantial bond, your Honor.

The Court: In any event, my own rule is that these defendants after they have had a full opportunity to be heard go into custody. That will be the order.

Mr. Riordan: To go into custody, your Honor?

The Court: Yes; not only this case but all cases I have tried, unless there is some showing made. And from what I have observed here I can't conceive of an opportunity for you to make a legal showing that would preclude me from ordering this defendant into custody. I say that kindly. [221]

If you wish to have some other break before that, or any time you wish.

Mr. Riordan: May 7th—I am just making a

quick calculation—is a week from Tuesday, is that correct—a week from Monday, I believe.

Mr. Constine: If that date isn't agreeable with counsel, we can come before your Honor in the meantime.

Mr. Riordan: Can we have it next Thursday, whatever date that would be?

The Court: Certainly. The 3rd. You can make the necessary motions to complete your record.

Mr. Riordan: Thank you.

Mr. Ringole: My presence will not be necessary?

Mr. Constine: You are on on May 7th.

The Court: Very well. You are to be here with your client on May 7th.

Mr. Ringole: My client will be here. He is in custody, your Honor.

The Court: It will be necessary for you to be here.

Mr. Ringole: Oh, yes. [222]

May 3rd, 1956

The Clerk: United States versus Yep and Ong, hearings on motions.

Mr. Constine: Ready for the United States, your Honor.

Mr. Riordan: Ready for the defendant Ong, your Honor. If it please the Court, at this time I would like to make an Ex Parte motion in relation to a new trial on behalf of the defendant Ong. I will proceed and make this very brief, your Honor.

The Court: Did you file your petition?



Mr. Riordan: No, I did not.

The Court: Why not?

Mr. Riordan: I was under the impression that I could do this *Ex Parte*, in view of the fact that at the time, after the finding was made——

The Court: I think it would be better if we have a proper record. There is a case on trial here. I will give you time to do that.

Mr. Constine: May I make an inquiry? The Probation Office has my file. What date was set for judgment? I believe he has to make the motion for a new trial prior to the sentence.

Mr. Riordan: Today is the 3rd. The 7th is when? I believe I could do it this afternoon and make the motion on the 7th. It would not be sufficient for the five days. [223]

Mr. Constine: I think that is the problem. I have a jury trial commencing Monday. Perhaps we will have to continue the judgment anyway in that case because the Probation Officer has not yet prepared his report.

The Court: Suppose it goes over a week?

Mr. Riordan: Very well, your Honor.

Mr. Constine: That is agreeable.

The Court: I think that is the best thing to do.

Mr. Constine: May the judgments be continued?

The Court: Also the case that is on for the 7th will go to the same day.

The Clerk: To May 10th for judgment and the hearing of motions in the Yep and Ong case.

The Court: Is that agreeable?

Mr. Riordan: Very well. [224]

May 10th, 1956

Mr. Constine: Now, your Honor, this is the case of the United States versus Yep and Ong that was tried before your Honor, and Yep's judgment is now continued to the 17th, as I understand it.

The Court: Yes.

Mr. Constine: So the only case before your Honor now is Mr. Ong. Counsel has made a motion for a new trial. Mr. Ong is charged alone in this case and has no connection with the other cases.

Mr. Riordan: I am a little confused, your Honor; I have heard all this——

The Court: If you are confused, all you have got to do is to inquire.

Mr. Riordan: That's what I am going to try to do, your Honor. Is it my understanding now that this matter, this case of 34979, we are going to proceed on our motion for a new trial, but that there will be no sentencing?

Mr. Constine: No, as I understand it Yep individually has been continued until May 17th for judgment in all three cases; the other cases are going forward.

Mr. Riordan: I see.

The Court: Anything else you are in doubt about?

Mr. Riordan: I hope not, your Honor. [225]

The Court: If you are, just assert yourself.

Mr. Riordan: Yes, your Honor.

The Court: All right. Proceed.

Mr. Riordan: If it please the Court, I desire at this time to make a motion for a new trial. My

motion for a new trial has been filed on May 4th, 1956, a copy of the same has been served upon the government, together with a notice of the same.

The grounds upon which I presently make my motion are, one, the Court erred in denying my motion for acquittal at the conclusion of the evidence; two, the verdict was contrary to the weight of the evidence; three, the verdict is not supported by substantial evidence; four, the Court erred in admitting testimony of all government witnesses to which objections were made.

I will basically, your Honor, summarize all these various objections by referring and crystallizing, if I can, my argument about insufficiency of the evidence to justify a verdict of guilty in this matter. I am going to be very brief, your Honor, I am going to cite——

The Court: We are very fortunate; we have considerable time, so don't hurry.

Mr. Riordan: Very well, your Honor. I am going to cite one case, the case of *People vs. Dire*, which I argued before to this Court, or discussed in my argument with this Court on [226] my motion for judgment of acquittal and also——

The Court: What is that citation?

Mr. Riordan: *People vs. Dire*, 332 U. S. 581; and also, your Honor, I am going to bring in another case. The other case I will argue, your Honor, which is new as far as my argument is concerned which I discovered last night, the case of *Rent vs. The United States*, 209 U. S. 893.

The Court: I don't know whether Mr. Constine is familiar with those cases or not.

Mr. Constine: Your Honor, we were not provided with any citation of the cases. However, I should state to your Honor the law concerning this matter was fully argued before your Honor.

The Court: No, it wasn't fully argued in relation to admissibility of evidence. I indicated to you, if my memory serves me, and if I am in error you correct me, I told you to crystallize your problem and present your case; you recall that?

Mr. Riordan: I think at the time I was making a motion.

The Court: Do you agree with it generally? Is that true?

Mr. Riordan: That's right, your Honor, at the time I was making a motion for judgment of acquittal.

The Court: Now, in order to preserve this record you will have to make a proper record.

Mr. Riordan: Yes, your Honor. [227]

The Court: And point it out.

Mr. Riordan: Yes, your Honor. Basically, your Honor, the facts as were presented by the Government in relation to the 1st day of February, 1956, were that Yep and Mr. Wu, the agent for the Government, met in the A.M.; that Mr. Wu testified that Mr. Yep stated he was going to see a contact of his; that he left Mr. Wu's apartment and that from there he drove to the residence of Mr. Johnny Ong; that he was in Mr. Ong's residence for a time and then he left; that Mr. Yep and Mr. Wu



met sometime in that day and that approximately 3:55 Mr. Yep and Mr. Ong met in Chinatown in San Francisco and they drove around in an automobile; that subsequent thereto Mr. Yep and Mr. Wu met at Tompkins'.

Mr. Yep stated he could not or did not have any narcotics for sale at that time, however he was making arrangements to procure the same and that he would probably be able to effect a sale that evening; that around nine o'clock Mr. Yep and Mr. Ong were seen together in the vicinity of Mason and Jackson in the City and County of San Francisco; that Mr. Ong left and subsequently came back to the same place around nine o'clock—or, rather, ten o'clock. In the interim between nine o'clock and ten o'clock Mr. Yep remained in the vicinity of Jackson and Mason; that at that time Mr. Yep was sitting in his car for about fifteen minutes, he would get out, and there was also testimony, your Honor, he entered a drug store in the vicinity [228] of Mason and Jackson; that he made a phone call at that time. Mr. Wu testified that approximately, I believe it was, 9:20 or 9:30, Mr. Wu testified, that he received a telephone call from Mr. Yep stating that he would be over to deliver narcotics that evening; that at approximately ten o'clock, as I stated, Mr. Ong came back to Mason and Jackson Street in San Francisco; that he was seen walking in carrying a baby in his arms; that Mr. Yep and Mr. Ong walked into an apartment house at 1003 Jackson Street. The agents testified to the fact that Mr. Yep remained in this particu-

lar building for a minute or less, and then he came out of the bulding, he drove up to Mr. Wu's apartment at approximately 10:15. He made a sale. That upon leaving he stated words to the effect that, "Well, I must go any see the man," and Mr. Yep left Mr. Wu's apartment, drove back to Mason and Jackson Street, that after Mr. Yep's arrival at Mason and Jackson Street Mr. Ong got into the car with Mr. Yep and they drove around.

There was also testimony, your Honor, that on the 7th of February Mr. Yep stated to Mr. Wu that a man who was dealing was about to purchase a car. I believe my recollection indicates—or at least indicates to me—that Mr. Wu stated that Mr. Yep did not indicate to him that the man who was his contact on that particular sale or sales, that Mr. Yep and Mr. Wu were engaged, was the individual purchasing a Cadillac automobile. [229]

There was some testimony that Mr. Wu and Mr. Yep met at Gino's; that Mr. Yep said, "Well, I'm"—after dinner—that "We are—I have to go join my connection." Subsequent thereto he went to a social club on Spofford Street or Alley in San Francisco; that in this particular club there were apparently several people, rather densely populated portion of San Francisco; that after going into the Spofford Social Club Mr. Yep and Mr. Ong were seen together—I believe it was standing next to Mr. Yep's automobile.

On February 13th Mr. Yep stated [230] that a contact of his was a man who was a big gambler around San Francisco, a man who had formerly

been charged as a bookie, and the case was dismissed; that also this man had worked in a cannery some time in the past.

Then on February 17, basically the matters that were introduced against Mr. Ong was that Mr. Yep in a conversation with Mr. Woo stated that a connection of his was willing to put up a Cadillac automobile as security to assure Mr. Woo that a particular purchase would be effected as to quality and the rest.

Now, there was also some testimony, your Honor, in which there was a conflict on the record. However, I don't believe that it is particularly applicable to this argument. It was that on February 7 Mr. Woo—or rather Mr. Ong and Mr. Yep were seen at a racetrack, I believe it was Bay Meadows in San Mateo County, State of California, and that they were seen talking to each other; that at some time thereafter Mr. Woo left the racetrack and he went to Mr. Ong's home.

Now, if it please the Court, I submit that these hearsay statements of Mr. Yep's that were introduced basically through Mr. Woo are matters which are of such a general scope, identification of a man without a name, an identification by using a rather general term of "a contact." A contact, in its general term, can mean an electrical contact, [231] a contact of a man shaking hands, a contact within a business field; it is a matter which, when taken in light of a narcotic charge, takes a particular meaning. Apparently it is a contact from which a man purchases narcotic goods.

I submit, your Honor, that any conversation Mr. Yep ever had with Mr. Woo that the word always used in referring to the suppliers was always that of a contact, and that in no case did any of the testimony which was allowed and introduced by the government through Mr. Woo constitute a proper identification or any means by which the court could assume that the party to whom Mr. Yep was referring as his contact, by taking in its full and four-square consideration of this case with the same connected Mr. Ong up with Mr. Yep in the sale of narcotics.

When Mr. Yep allegedly identified his contact here in San Francisco as an individual who owned a Cadillac automobile, as an individual who was a gambler, as an individual who was previously charged as a bookie and that the matter was dismissed, as a man who had formerly worked in a cannery, I submit that that identification, your Honor, could apply to thousands and thousands of people in this United States, and undoubtedly thousands within the State of California, and probably at least one thousand people within the city and county of San Francisco; that the people who own Cadillacs are rather numerous here in San Francisco; the people who [232] are gamblers are rather numerous in San Francisco. Perhaps we could even assume that people who are big gamblers also own Cadillacs, and the people who are not gamblers also own Cadillacs, and have worked in canneries. There was no establishment of any conspiracy prior to the introduction of these various



hearsay statements which would identify Mr. Ong with Mr. Yep; that none of the statements as outlined to the court at the present time could be associated as statements which were in furtherance of a conspiracy at all.

Now, basically, your Honor, I feel that we have an instance in which, during the 1st day of February, 1956, we have Mr. Ong and Mr. Yep at least four times they are seen together, they fit the time, the incident, the first alleged or supposedly alleged meeting was when Mr. Yep drove to the home of Mr. Ong. My recollection is that there was no testimony at all to the fact that Mr. Ong was in this home, no reason to assume that he necessarily was in this home. However, taking the five meetings of this particular defendant, your Honor, I believe we can say that in view of the testimony of Mr. Ong that "Mr. Yep and I have been friends for a long time" that there is nothing particularly unusual in two people meeting five times in one day. Assuming that Mr. Yep made a sale on the 1st day of February, 1956, and again accepting the fact that Mr. Ong and Mr. Yep met five times during the course of this day, that it is obvious that close or near to one [233] of these meetings, or even two of these meetings the sale must have occurred, that fact alone does not give rise to an inference of guilt on the part of Mr. Ong in this matter. The meetings alone are not sufficient, if it please the court, upon which a finding of guilty in relation to Mr. Ong can be based.

Again I cite *The People Vs. Di Re* 332 U. S. 581.

I will briefly outline the fact of that case as I believe they are pertinent to this argument.

A federal agent was informed that "A" was to sell "B" ration stamps at the spot "X." An agent and police officer drove to place "X" and found "B" sitting in the back seat. Now "B" is the party who is to purchase the stamps. "B" was sitting in the back seat and he was holding ration stamps. "B" said he had obtained the same from "A." "A" and Di Re were sitting in the front seat. On a search of Mr. Di Re several counterfeit stamps were found on his person.

The court, in discussing the conspiracy in this particular case, said that the presence of Di Re in the car did not authorize an instance of participation by Di Re in the sale of coupons from "A" to "B."

It states further, your Honor, and this is a case in which many conspiracy cases refer to and seemingly the quote that they take out of this particular Di Re case rather constantly is the fact that that presumptions are not to be [234] lightly indulged in from mere meetings. The cases subsequent to the Di Re case after that particular statement refer to *The People Vs. Di Re*.

I have another case, your Honor, I stated I would refer to at the present time. That is the case of *Rent Vs. the United States*, and the citation I have here is 209 U. S. 893. I want to check to see that I have it correct, your Honor.

That should have been 209 Federal 2d rather than U. S. 893.

In that case, your Honor, the facts are a little involved; I tried to break them down as simply as I possibly could. I have used the terms A, B, and C. One of the matters that leads to confusion in a discussion of this case is that the court merely states that A, B and C were indicted as co-defendants and that C was not tried. Now, C apparently was a rather large actor within this case. However, they discussed this case only in the light of A and B, which in reality their names are "Rent" being A, my discussion and B being one Currey.

Now, A, B and C were indicted for a conspiracy in relation to narcotics. At about 9:30 p.m., A, B and C walked to a corner. B and C waited on the corner and A was seen to go to an auto, bend down and light a cigarette.

Now, the agent and the officer who testified in this matter stated that in their opinion from his manner of smoking it appeared that A was smoking a marijuana cigarette. [235] Now, A walked back to the corner where B and C were standing. The agents stayed in the vicinity of this first act. At about eleven p.m. the officer, one of the officers, who was surveilling this position, was informed that someone had placed a marijuana cigarette near his car. He went over to the car and he searched about the car and he found a marijuana cigarette in the grass close to the car. He picked up the cigarette and he marked it by putting his name on the cigarette and also the date and the place where it was found.

At about 11:50 A, B and C, the original three

actors and one D came up to this car. A entered the car again and B, C and D stayed outside. B then picked up the cigarette, he lit it and began to smoke it. The agents came up and said no one move and at that time they saw B slip something over the top of the car. They arrested the four gentlemen and then went out and they searched the area of the street right next to the automobile and there they found this marked cigarette in the street.

After the arrest, A and B were searched. From A's pocket they found a few particles of marijuana. From B's pocket they found a small piece of marijuana. The court in discussing this case stated that the evidence as to a conspiracy was clearly insufficient. The only evidence was that A and B possessed marijuana, and the fact that they were walking in the company of each other, stating, your Honor, [236] that the gist of conspiracy is agreement. To support the charge, intent must be shown. The walking together is not sufficient. Presumptions of guilt are not lightly to be indulged in from mere meetings. The inference reasonably to be drawn from the evidence must not only be consistent with this guilt but inconsistent with every reasonable hypothesis of innocence. [237]

Now, your Honor, apparently the government's theory of this case in relation to Ong was that approximately 9:00 o'clock on February 1 Mr. Yep and Mr. Ong met; that Mr. Yep stayed in the vicinity of Jackson and Mason; that Mr. Ong left and was gone for approximately an hour. Mr. Ong



takes the stand, he says "I recall meeting Mr. Yep, he went to an apartment house, watched TV for a while, we all left the apartment house, I got to the corner of Jackson and Mason, my little boy needed a haircut, I took him down to the barber shop and I returned at approximately 10 o'clock at which time I walked into the apartment house at 1003 Jackson Street; my recollection is that Mr. Yep came in and he also went up to the apartment house. He left sometime thereafter, the exact time I don't know, because I didn't see him."

Now, the government would have you believe, your Honor, that it was when Mr. Ong returned at 10 o'clock that at that time he somewhere had picked up heroin and delivered the same to Mr. Yep. I submit, your Honor, that the evidence and the fact of Mr. Ong's leaving and Mr. Yep's remaining in the vicinity at this particular time and Mr. Ong's nearness to the event of sale and their meeting was an act which was highly inconsistent, that the acts were as consistent, rather, with innocence as with guilt.

There is also a very strong point, I think, for the Court's consideration at this time, your Honor, as I argued in [238] my closing statement, that during this period from 9 o'clock until 10 o'clock when Mr. Ong states he went to get a haircut for his little boy that the government agents apparently had been tailing Mr. Ong for a long time, that there were several agents about the vicinity at this time, that apparently from Mr. Woo they had information that Mr. Yep was to make a sale on that par-

ticular night and yet there was no evidence, there was no testimony by any government agent that despite the fact that they had followed Mr. Ong during the rest of the day that from 9 o'clock until 10 o'clock they let him go freely and they would have to assume that during this time when no surveillance, no suspicion was placed upon Mr. Ong sufficient to have government agents following him that he engaged in some nefarious traffic in narcotics.

It was stated further, your Honor, in the case of *Rent Vs. the United States*, about five lines from the bottom, that from B's possession of the marijuana cigarette to constitute him a transferee of marijuana required to pay the transfer tax the possession must have been with guilty knowledge or intent. This is recognized in the indictment which charges B's conduct to have unlawfully, knowingly and feloniously committed. The one small piece of marijuana found in the dustings of Curry's pocket might well have dropped from a match box borrowed from an associate or otherwise accidentally found its way into his pocket. Curry's possession of one [239] cigarette was a mere fleeting possession not inconsistent with honest intention or mere curiosity, and his throwing the cigarette away upon being ordered to stop is not in our opinion, substantial evidence of a guilty knowledge or intent. Criminal intent is a *sine qua non* of the criminal responsibility.

I also have a quote, Your Honor, from the case of *United States vs. Carengella*, 198 Federal 2nd,

Page 3, in which they were discussing a conspiracy charge—I am just taking this out of context, Your Honor—that association with guilty men may create suspicion, but is not evidence of sufficient weight to convict under the statute in question.

Now, I would like to call the Court's attention again that there was a conflict in the evidence in relation to the activities that occurred on February 7, 1956. You will recall that this was the date that Mr. Ong testified that he had purchased an automobile. Mr. Ong stated: "I don't recall going down to the track that day." He says on that particular date apparently the trotters were running. "I have never been to Bay Meadows this year while the trotters were running."

You also heard testimony from the government agent, the man who sold the automobile to Mr. Ong, I believe his name is Tom, Tom Demitty, and he stated, I believe, Your Honor, that that it was his recollection he sold the car sometime after [240] lunch. He said, "I think it was sometime between 2 and 4 o'clock." He said it took quite a long time to negotiate this sale. He said, "We started around 2 o'clock, finished around, sometime around—" well, he wasn't too definite on it, but said it could have been close to four. I submit, Your Honor, that there is no intention, I don't believe, on the part of any government agent here, and I do not attempt to say so to falsify a fact here of identification, however, you must take the evidence as it was presented in its proper light, and the fact that these agents say they followed Mr. Yep and saw him go and talk to

several people at the race track, some of them said, well, we had seen Mr. Ong before. But there is a possibility there, Your Honor, which can be reasonably deduced from the evidence and the conflict of the evidence presented that there was a misidentification of Mr. Ong, that they saw someone who appeared to be Mr. Ong.

I submit, Your Honor, that on the other matters, and the meetings and the various theories that were presented before the Court that the same conflict exists and that there was either a misinterpretation or misidentification by some of the agents involved here.

The basic position and the basic matter that the government has in this matter, Your Honor, is the fact that there were several meetings by Mr. Ong and Mr. Yep; that several times Mr. Yep stated to Mr. Woo that I am going to [241] contact, or my contact is doing an act, the act of purchasing an automobile; not my contact in this sale, but a contact in San Francisco for purchasing an automobile; that on the same day or about the same date Mr. Ong purchased a Cadillac automobile; that none of these statements were matters that were in furtherance of the conspiracy; that at the time they were introduced by the government there was no corpus delicti established, that there was no proper identification or any reasonable grounds to believe, Your Honor, that Mr. Yep was referring to Mr. Ong when he was making these statements; that the fact that Mr. Yep had informed Mr. Woo on the 17th day of February that a local contact of his was



willing to put up as security a 1955 Cadillac automobile is a mere circumstance which the Court considers in view of the fact that simply because Mr. Ong also had a 1955 Cadillac at that time that he was the contact who was to put up this security.

I submit, Your Honor, that the government's case presented no substantial evidence upon which a conviction could be found.

Mr. Constine: May it please Your Honor, I have a very brief statement. Counsel has presented no new facts whatsoever other than the ones he argued originally before Your Honor on a motion for acquittal. In fact, he has not outlined the evidence in detail as he did then. I am sure that he has not intentionally overlooked the facts in this case; [242] he is to be complimented for his zeal in representing his client; but the facts as Mr. Riordan has explained them are not entirely facts which were produced by the government in this case.

There was not only a meeting between this defendant, a series of meetings between the two defendants over a period of ten days, they were under constant surveillance by the agents. Mr. Yep, the man who sits before Your Honor, very definitely and accurately and acutely identified Mr. Ong as his source of narcotics. And these are the important things which counsel did not mention, when Mr. Ong was accused of engaging in this illegal narcotic traffic he remained silent, made no explanation, and Your Honor, he admitted quite freely from the stand on examination and cross-examination that he was doing this to protect Mr. Yep.

Now, the defendant was involved in prior narcotic difficulties, stands convicted of a prior felony, and I think the most important thing is that when he testified before Your Honor, Your Honor stated at the time Your Honor convicted him that Your Honor could not believe the testimony of Mr. Ong; that if Mr. Ong was going to be believed then all the witnesses of the government and all the agents would have to be disbelieved, and Your Honor stated that you did not believe Mr. Ong was telling the truth.

Now, counsel cites cases with which we have no quarrel; [243] they have no applicability here, they involve one meeting of a man at a certain time or place. These agents saw them meet on innumerable occasions over periods of at least ten days, and I think that the record is abundantly clear that there was not only convincing evidence beyond a reasonable doubt, but there was overwhelming evidence beyond a reasonable doubt. In fact, the defendant Ong corroborated much of the evidence that the agents testified to except that he denied he was involved in narcotics. He said that he was protecting the defendant Yep. I think the record in this case is a substantial record of a conspiracy between these two defendants, the dealings and the conversations with one another, and I submit to you that counsel has argued the same matters that he argued when Your Honor denied the prior motion, and I ask that the motion for a new trial be denied. This defendant was given a fair trial, he took the stand

himself, he testified, and Your Honor disbelieved him.

The Court: Motion for a new trial will have to be denied.

Ready for judgment?

The Defendant: Yes, sir.

The Court: Do you know any reason, legal or otherwise why sentence should not be imposed in this case yourself?

The Defendant: I don't know, sir. [244]

The Court: You don't know any reason?

Well, this record discloses that you were in this same difficulty in relation to this poison before. For that reason the court has to take that into account in sentencing you. You understand that, do you?

The Defendant: Yes, sir.

The Court: You are now ready for sentence?

The Defendant: Yes, sir.

The Court: Now, we have counts one and two before the court?

Mr. Constine: No, Your Honor, this defendant was just named in the conspiracy count and that was the count under which he was convicted. The other counts involve Mr. Yep. This defendant is just convicted of count five of the indictment—pardon me, count three of the indictment.

The Court: What is the penalty on that case?

Mr. Constine: Imprisonment for not less than two nor more than five years, Your Honor.

The Court: Keeping in mind that you have been in court before and sentenced on virtually the same charge for dealing in these narcotics you can con-

sider yourself very fortunate for I would give you the limit if there was any other matter before me for the reason that a young man like you has no business at all to engage in this sort of thing.

It is the sentence of the court and the judgment of the [245] law that you be taken into the custody of Attorney-General or one of his legal representatives to be imprisoned for a period of five years.

Anything further you wish to say?

Mr. Constine: May a nominal fine be assessed?

The Court: Nominal fine of \$1.00. That's all.

[Endorsed]: Filed June 25, 1956. [246]

---

[Endorsed]: No. 15178. United States Court of Appeals for the Ninth Circuit. Ong Way Jong, alias Johnny Ong and Wee Zee Yep, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: June 29, 1956.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.



In the United States Court of Appeals  
for the Ninth Circuit

No. 15,178

ONG WAY JONG, alias JOHNNY ONG,  
Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

DESIGNATION OF POINTS RELIED UPON  
BY APPELLANT ONG WAY JONG

Now comes Ong Way Jong, alias Johnny Ong, the appellant above named, who has heretofore, to wit, on the 17th day of May 1956 appealed to the United States Court of Appeals for the Ninth Circuit, from the judgment of conviction given, made and entered against him on the 10th day of May 1956, in a cause depending in the District Court of the United States for the Northern District of California, Southern Division, and numbered therein 34979, the record on which appeal was duly filed in this Court the 28th day of June 1956, as from the record aforesaid duly filed and docketed in the office of the Clerk of this Court fully and at large appears, and pursuant to the standing rules of this Court files his designation and specification of the points upon which he, the said appellant, will rely upon said appeal for the reversal of the judgment aforesaid:

1. The evidence was insufficient to justify the judgment of conviction;

a) The corpus delicti, that is, the conspiracy itself, was not established;

b) There was no competent evidence to establish the existence of any conspiracy between appellant and Wee Zee Yep;

c) The only evidence of any participation of appellant with any transaction in narcotics consisted of hearsay acts and declarations of the alleged co-conspirator, which were incompetent to establish the conspiracy, and which were not binding upon the appellant.

2. The District Court erred in denying the motions of appellant for a judgment of acquittal.

3. The District Court erred in denying appellant's motion for a new trial.

4. The trial court erred in admitting, over the objection of appellant, the hearsay testimony of Milton K. Wu as to his dealings and conversations with the alleged co-conspirator, Wee Zee Yep, all of which were out of the presence of the appellant, whom the witness testified that he never saw at any time prior to his arrest.

5. The trial court erred in admitting in evidence alleged accusatory statements made in the presence of the appellant as testified to by the witness Hipkins.

6. The trial court erred in admitting in evidence testimony of the witness Wolsky to the effect that while appellant was under arrest he remained silent

in the face of an accusatory statement by the arresting officers.

7. The Government officers were agents provocateur and the conviction cannot be sustained.

Dated: July 5, 1956.

HERRON AND WINN,  
/s/ By FRED R. WINN,  
Attorneys for Appellant

[Endorsed]: Filed July 6, 1956. Paul P. O'Brien,  
Clerk.

